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Paradigms in Caribbean trade diplomacy: Negotating the CARIFORUM–EC Free Trade Agreement.

Keste Oswald Miller

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**PARADIGMS IN CARIBBEAN TRADE DIPLOMACY:
NEGOTIATING THE CARIFORUM – EC FREE TRADE AGREEMENT.**

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A THESIS SUBMITTED IN PARTIAL FULFULMENT OF THE
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PhD. Thesis

Paradigms in Caribbean Trade Diplomacy: Negotiating the CARIFORUM-EC Free Trade Agreement.

I confirm that this thesis is my own work and all references and sources are duly
acknowledged.

Signature.....

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ABBREVIATIONS

AASM	African States and Madagascar
ACP	Africa, Caribbean and Pacific States
AFT	Aid for Trade
AU	African Union
CAFITA	Caribbean Free Trade Association
CAP	Common Agricultural Policy
CARIBCAN	Caribbean-Canada Trade Agreement
CARICOM	Caribbean Community and Common Market
CARIFORUM	Caribbean Forum of ACP States
CARTAC	Caribbean Technical Assistance Centre
CART. Fund	Caribbean Aid for Trade and Regional Integration Trust Fund
CBI	Caribbean Basin Initiative
CCC	CARICOM Competition Commission
CCJ	Caribbean Court of Justice
CDB	Caribbean Development Bank
CDF	Caribbean Development Fund
CET	Common External Tariff
CEMAC	Central and Western African Group
CIDA	Canadian International Development Agency
CN	Chief Negotiator
COFAP	Council for Finance and Planning
COMESA	Common Market for Eastern and Southern Africa
COTED	Council for Trade and Economic Cooperation
CRIP	Caribbean Regional Indicative Program
CRNM	Caribbean Regional Negotiating Machinery
CRTA	Committee on Regional Trade Agreement
CRT	CARICOM Review Team
CSME	Caribbean Single Market and Economy
CSP	Country Strategy Paper
DFID	United Kingdom Department for International Development
DFQF	Duty Free Quota Free
DGs	Directorates-Generals
DR	Dominican Republic
DSB	Dispute Settlement Body
EAGGF	European Agricultural Guidance and Guarantee Fund
EBA	Everything But Arms
EC	European Commission
EC	European Community
EC.	European Communities
ECHO	European Community Humanitarian Office
ECOWAS	West African Economic Community

ECLAC	Economic Commission for Latin America
EDF	European Development Fund
EEC	European Economic Community
EIB	European Investment Bank
EPA	Economic Partnership Agreement
EU	European Union
EU-LAC	European Union-Latin America and Caribbean
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FTA	Free Trade Area
FTAA	Free Trade Area of the America
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement in Services
GSP	Generalized System of Preferences
HS	EU Harmonized System
IBRD	International Bank of Reconstruction and Development (World Bank)
IDB	Inter-American Development Bank
ILO	International Labour Organization
IMF	International Monetary Fund
IP	Innovation and Intellectual Property
IRTC	Internal Relations and Trade Committee
JLP	Jamaica Labour Party
JMTC	Joint Ministerial Trade Committee
JPA	Joint Parliamentary Assembly
JTI	Jamaica Trade and Invest
LAC	Latin America and the Caribbean
LDCs	Least-Developed Countries
MDC	More Developed Countries
MDG	Millennium Development Goals
MFA	Multi fiber Arrangement
MFN	Most Favoured Nation
MTC	Ministerial Trade Committee
MTI	Ministry of Trade and Industry
NAFTA	North American Free Trade Agreement
NCC	National Contracts Commission
NGO	Non-Governmental Organization
NIEO	New International Economic Order
NIP	National Indicative Program
NSA	Non-State Actors
NT	National Treatment
NWG	National Working Group
OAS	Organization of American
States OAU	Organization of African Unity
ODCs	Other Duties and Charges
OECD	Organization for Economic Cooperation and Development

OECS	Organization of Eastern Caribbean States
OCT	Overseas Countries and Territories
OCG	Office of the Contractor General
OPEC	Organisation of Petroleum Exporting Countries
OPM	Office of the Prime Minister
ORRCS	Other restrictive Regulations of Commerce
PIOJ	Planning Institute of Jamaica
PMSC	Prime Ministerial Sub-committee on External Negotiations
PNP	Peoples National Party
R&D	Research and Development
RDF	Regional Development Fund
RIP	Regional Indicative Program
RNM	Regional Negotiating Machinery
RoO	Rules of Origin
RPTF	Regional Preparatory Task Force
RSP	Regional Strategy Paper
RTA	Regional Trade Agreement
SCM	Subsidies and Countervailing Measures
SDT	Special and differential treatment
SEM	Single European Market
SIDS	Small Island Developing State
SME	Small and Medium Size Enterprises
SPEC	Southern Pacific Economic Commission
SPS	Sanitary and Phytosanitary
STABEX	Systems For the Stabilization of Export Earnings from Agricultural Commodities
SYSMIN	Special Financing Facility for Mining Products
TBT	Technical Barriers to Trade
TCC	Technical Coordinating Committees
TDC	Trade and Development Committee
TRIPs	Agreement on Trade Related Aspects of Intellectual Property Rights
TTMA	Trinidad and Tobago manufacturers Association
TWG	Technical Working Group
UK	United Kingdom
UN	United Nations
UNCTAD	United Nation Conference on Trade and Development
UNESCO	United Nations Education Scientific and Cultural Organisation
USAID	United States Agency for International Development
UWI	University of the West Indies
WGE	Working Group of Experts

WHO	World Health Organization
WIC	West Indian Commission
WTO	World Trade Organization

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Abstract

The CARIFORUM States in signing the Economic Partnership Agreement (EPA) with the European Community on the 15th October, 2008 in Bridgetown Barbados have demonstrated a bold step by a group of Small Developing Island States (SIDS) on the trail of the emerging global trade regime because, notwithstanding the levels of economic disparity between the two sides, the Caribbean accepted the unequal nature of the partnership in a pragmatic and constructive sense. The region's negotiators skilfully used the asymmetry of power dynamics of the European Community and the global trade inertia to craft a deal and carved a way forward for themselves which gave practical application to the realist theory of International relations in the context of international bargaining with domestic constraints. They have illuminated a paradigm shift towards a new era in which small vulnerable developing states can become proactive in order to protect their vital commercial interests.

The CARIFORUM-EU Economic Partnership is one of the most innovative and far-reaching Free Trade Agreement ever entered into in the context of North-South relations. So unique and innovative are the arrangements that they now evidenced the new paradigm and a model for future Free Trade Agreement, not just between Europe and the rest of the developing world but, among developing countries themselves. It also has implications for the multilateral system in the context of the Doha Round of negotiation. The research contributes to knowledge by illustrating the application of an adapted combination of the classical co-operative and non-cooperative models of coalition bargaining developed by John Nash and the Thomas Schelling's model analyzed in the context of Robert Putman's games theory are very relevant in explaining the Paradigms in Caribbean trade diplomacy and how the regions succeeded in leveraging concessions in negotiating the CARIFORUM-EC Free Trade Agreement. The work places the asymmetric problems of the CARIFORUM States in the context of their need for a specific outcome in light of their national interests and the EC's desire to negotiate a new trade arrangement in keeping with the demands of its own domestic constituents and their wider international trade agenda. Finally, the work challenges the assertions that the EC in International Trade Negotiations uses its superior negotiating machinery and strength of its markets as secured vehicles to influence and impose its external trade policies on developing countries and further that the ACP States are reactive in character.

INTRODUCTION

The CARIFORUM¹ Group of African Caribbean and Pacific (ACP) states has signed a Free Trade Agreement with the European Community ²(EC) and its Member States on the 15th October, 2008 in Bridgetown Barbados.

This study explores the diplomacy of the CARIFORUM states in their trade and cooperation relations with the EC within the wider context of the ACP Group of States. The Caribbean States were first exposed to international trade negotiations when they engaged the Europeans in the negotiations for the first Lomé Agreement between 1973 and 1975 in which they played a very significant role. When the ACP States and the EEC negotiated the first Lomé agreement the parties confronted each other from two different philosophical and ideological positions. The ACP states had been exposed to different trade regimes with Europe; there was the Yaoundé Accord with the Francophone African states, the Arusha Agreement which included Tanzania and other Anglophone States, there was also an agreement with Nigeria which was never implemented and in the Caribbean there was the Commonwealth Sugar Agreement of 1925 with the United Kingdom under which sugar was supplied by the Caribbean.

The negotiations in 1973 were the first for the region undertaken at a time when the Caribbean Community was building its own integration movement. Europe was also building its Community but had gone much further than the Caribbean. In reality, what

¹ The Caribbean Forum Group of ACP states is a European construct of the Member States of the Caribbean Community (CARICOM), Cuba and The Dominican Republic (DR). Cuba is not a party to the Free Trade Agreement. The Caribbean Community was established under the Treaty of Chaguaramas 1973 and is the successor organization to the Caribbean Free Trade Area (CARIFTA) which was established in 1968. The Dominican Republic is not a Member of CARICOM.

² The European Community was established under the Maastricht Treaty signed on the 7th February 1992 which came into effect on the 1st November 1993. The Treaty established three pillars of the union: (1) The European Community (2) Justice and Home Affairs and (3) The Common Foreign and Security Policy.

the Lomé negotiations demonstrated for the Caribbean States was the extent of the cohesion and unity which they had achieved, a factor which had eluded them during their attempt to federate in 1958.

Britain by the 1960's had realised that its future rested within the EEC and not with the former colonies because with the declining purchasing power of these colonies, British exports declined and its imports increased. Therefore, it had to seek new and more lucrative markets as the burden of special arrangements with its former colonies could not be sustained³. So, while Britain and the EEC were making arrangements to combine their markets, the Caribbean was putting its own arrangements in place because in the latter half of the 1960's the region began to place emphasis on putting structures in place and developed processes for Caribbean integration mainly at the economic and functional levels⁴.

During the Lomé negotiations the Caribbean region had achieved a level of unity that was greater and deeper than the unity achieved within the EEC at the time. However, this was an element of the EEC's functioning of which the Caribbean States were unaware until the parties were deep into the negotiations for the Lomé agreement⁵. The level of unity achieved in the Caribbean was transported into the body construct of the ACP Group as a deliberate strategy to confront the EEC⁶. The CARICOM Member States were not only active in the Caribbean region because they also played a leading role in organizing a large number of former European colonies in Africa and the Pacific to form the bargaining coalition to collectively negotiate the Lomé Convention in 1975

³ Babarinde Olutemi A. *The Lomé Conventions and Development*. An Empirical Assessment. Avebury. Ashgat Publishing Limited (1994) p. 3.

⁴ Emmanuel, Patrick A.M. *Approaches to Caribbean political integration*. Occasioned Paper No. 21 Institute of Social and Economic Research (Eastern Caribbean) UWI. Cave Hill, Barbados (1987). p. 1.

⁵ Interview- Sir Shridath Ramphal. January 8, 2009. Barbados.

⁶ Ibid.

for preferential trade and economic cooperation with the EEC ⁷. Indeed, it was Shirdath Ramphal of the Caribbean delegation who first referred to the troika of the bargaining coalition as the African, Caribbean and Pacific (ACP) States⁸ and who later pressed the EEC to apply some of the unutilised funds from previous European Development Fund (EDF) to purchase the building which now houses the ACP Secretariat in Brussels⁹. But while Shirdath Ramphal was quick to support the acceptance of an EC's late offer to make the Lomé arrangements permanent, the rest of the ACP Group felt that they did not want such arrangements because it would not be in their best interests¹⁰. Undertaking the negotiation for Lomé was a very ambitious initiative advanced by the Caribbean as it was they that went in search of the Africa States to forge a unity with them and invited the Pacific States to join in order to achieve the wider objective of the Group of 77 which was to change the global economic structure through the New International Economic Order (NIEO). The Caribbean's position was well articulated by P.J. Patterson in the Jamaican Parliament in June 1978 when he stated

⁷ Evisman , Michael H in Hillman,RS and Thomas J. D'Agostino ed. *Understanding the Contemporary Caribbean*, Lynne Rienner Publisher (2005) p. 150.

⁸ Interview- Sir Shirdath Ramphal. January 8, 2009. Barbados.

⁹ Interviews- Ambassador Owen Singh, May 13, 2009. London.

¹⁰ Interviews- Shirdath Ramphal, June 8, 2009 and P.J. Patterson, March 3, 2009.

¹¹ Mills, Don: *Readings on the New International Economic Order*. Jamaica National Commission (1978) p. 70. In 1978 Jamaica became the Chair of the Group of 77 and it spoke for the group whenever they confronted the developed world at the negotiation. Jamaica also became President of the Economic and Social Committee (ECOSOC). Further, Jamaica's Permanent Representative in Geneva was President of the United Nations negotiating Conference on the Common Fund while its delegation to the Law of the Sea Conference was the rapporteur of that Conference.

that Jamaica was “...totally convinced that the establishment of a New International Economic Order”¹¹ of necessity was a fundamental part of Jamaica’s foreign policy objective. Part of Jamaica’s foreign policy objective was to see to the implementation of the UNCTAD agenda agreed in 1964. So, while the Non-Aligned Movement and the Group of 77 were very influential in the General Assembly of the United Nations, Jamaica took “center stage” in Third World politics¹² and defended the stance of the South on the question of South-South development within the context of the North-South dialogue. The strategic objective of the Caribbean was to place the Lomé Convention and the Group of ACP States as a microcosm of the South to confront Europe which was itself the symbol of the North¹³.

The EEC wanted reciprocity as the central focus of the Lomé trade regime but the Caribbean did not. Indeed, reciprocity was at the heart of the European negotiation thrust but for the ACP it was totally unacceptable. Therefore in order to achieve their objective, the Caribbean which had the lead to negotiate trade, had to craft credible reasons to justify its call for non-reciprocity. Their success in this area was based on the strong philosophical argument in Aristotle’s ethics which argued that reciprocity has validity with equals but as between un-equals, it made things worse, so as between UN-equals, equity requires non reciprocity¹⁴. This reference was used to great effect in the negotiations as Shirdath Ramphal demanded non- reciprocity for the ACP to which

¹² Levitt, Kari: *From Decolonization to Neo-liberalism: What have we learnt about Development in the Critical Tradition of Caribbean Political Economy*. (Eds.) Kari Levitt and Michael Witter (Ian Randle Publishers, Kingston, Jamaica, 1996). p. 213.

¹³ Interview- Sir Shridath Ramphal. January 8, 2009. Barbados.

¹⁴ Interview- PJ Patterson, March 3, 2009 & Sir Shirdath Ramphal, June 6, 2009. The reference to Aristotle’s ethics was provided to the group in a review and Strategy meeting of the Caribbean delegation by the Barbadian Minister, Cameron Tudor.

¹⁵ Interviews- Sir Shirdath Ramphal, June 8, 2009, Barbados & P.J. Patterson March 3, 2009.

Europe strenuously objected. He posed the question to the Europeans thus: “have you not read your own philosophers?”¹⁵ and quoted from Aristotle’s ethics and rested his arguments there. This, it is suggested took the Europeans by surprise and brought the discussions to a higher level which created the avenue for the ACP to defend their demands for non-reciprocity and caused the Europe to move away from their core position on reciprocity¹⁶.

Since then, Europe was always keen on returning to reciprocity¹⁷ and so the negotiations for the Uruguay Round became a major corner stone in achieving that needed breakthrough. The conclusion of that round left the non-reciprocity arrangement between the ACP States and the EC very exposed to extinction.

The opportunity to return to reciprocity was seized by Europe during the 1996 mid-term review of Lomé IV at which time the European Commission Green Paper proposed the dismantling of the non-reciprocity regime. So, by the time the parties came to negotiate the Cotonou Agreement, the ACP realised that Europe was determined to end the old regime in order to advance its global agenda because Lomé no longer stood at the apex of its relations with the developing South.

The Cotonou Agreement was therefore meant to be the last such non- reciprocal trade agreement in the context of the European global design because Europe had decided not to seek any new waiver to extend the regime which was scheduled to expire on the 31st December, 2008. The negotiations for the Economic Partnership Agreement (EPA) to replace the old regime with Europe was therefore directed by the Cotonou Agreement and had to be undertaken within the ambit of Article XXIV of GATT 1947.

¹⁶ Ibid,

¹⁷ Interview- Ambassador Owen Singh May 13, 2009. London, UK. Ambassador Singh represented Jamaica in negotiating Lomé II & III.

The Caribbean realising the importance of maintaining cohesion within the troika of the bargaining coalition of the ACP States, pushed to negotiate the EPA under the all ACP umbrella but in 2003, the all ACP phase failed to produce the desired outcome for the ACP and the regions were forced to negotiate singularly and frontally with Europe. The Caribbean knew what it wanted from those negotiations and what it did not. It also had a fair idea of what Europe wanted, so also what was expected of the region at the mutilated level and in the Group of 77. However, as the region sat at the negotiating table with Europe it had to protect its own interest and has therefore negotiated the EPA in the classic non-cooperative bargaining model.

Placing the research within the existing literature.

The current Cariforum EC relations were born out of the wider ACP-EC trade and cooperation arrangements which have been deeply rooted in the historical experience and associations of both sides. There is a large body of literature on the relation between the ACP and the EU most of which argue the merits and other aspects of the relationship, but seems limited in terms of the specificity of the Caribbean's role. The literature examines the history, development and implementation of the various conventions and the theoretical considerations of the negotiations.

The uniqueness of the Lomé Convention and its value to North-South relations in the 1970s has been argued by the early writers who put the relationship in the context of the post colonial global economic regime (Schiffman 1975, Friedeburg 1975, Ramphal 1975 & 1985, Mayall 1979 & 2005, Cable 1980, Cosgrove Twitchett 1976 & 1981, Gandia 1981, Marable 1987, Payne & Sutton 1984, Mills 1991, and Brown, 2002,). The history of the relation is extensively presented by (Brown, 2002) who examined the relations from 1957- 2000 and placed the Conventions in the context of a response to a pattern of North-South relations and argued that the relation was founded on the ACP States' demand for a change in the relationship in the international political economy. He also argued that the North-South dialogue is important in explaining the failure and shortcomings of the relationship in the dynamics of the global political economy. This

thesis finds support and alignment with the basic tenets of the historical arguments, but makes the additional arguments which define and expose the contribution which the Caribbean States have made to the processes and development of the group.

Also, there are strong academic arguments on the technical and developmental dimensions of the relationship, for example Stevens¹⁹⁸⁵, McQueen and Stevens 1989 argue the weaknesses of the regime and the policy failures with respect to the implementation of the various development packages and initiatives of the regime.

The findings of this thesis support these academic and historical analyses in the main, but add two dimensions which have not been addressed by the existing literature. Firstly, that the use of the instrument of Part 1V of the Treaty of Rome to create development policies and strategies for newly independent states by the EC without a concomitant redesign of the instrument to depart from its original intent, is part of the reasons for the failure of the Lomé regime to provide the expected improvement in trade and development and secondly, it argues the case of the emerging paradigms of Caribbean diplomacy within the context of the ACP Group and the multilateral regime.

The long running debate as to the equality of the ACP-EC partnership still persists because even though most writers have settled the question of equality of partnership in the relations, this thesis argues that the finality of the positions for or against rests in the perception of sovereignty on the one hand and economic power on the other hand. The actual responses are by and large based on a perception in a divide depending on whether one takes a pro European or indeed an ACP view point¹⁸. However, what seems beyond dispute which also highlights the unequal nature of the partnership is the extent to which Europe has unilaterally changed its position, strategies and policies with respect to the application of aid funding for ACP States without any consultation with those States, notwithstanding the agreement that decisions relating to the application of

¹⁸ This position is derived from an analysis of the views expressed in the structured interviews conducted for this thesis.

the allocated funds are to be made jointly. Nowhere is the unequal nature of the relation more pronounced than in the area of development cooperation and the EDF discretionary spending. Grynberg and Clarke & (2006) and Matheson(1997). Because, even though the Joint ACP-EU Council of Ministers is required to approve the various changes to the EDF funding for various initiatives, it is the EU that has dictated the initiatives for which funding will be made available, for example the use of funds for debt relief, HIV/AIDS, Malaria and TB, African Security, Water, and Energy Facilities.

Cosgrove-Twitchett (1976, 1981) and Zartman (1976, 1995) have argued the merits of the ACP-EC relationship stressing “equality” of partnership among politically independent states and aligned their arguments with the liberal thinking of international relations and the more general construct of the theories of state relations and interdependence. These theoretical perspectives of the relation seemed to have changed however, because by 1981 both writers agreed that the relationship was indeed unequal.

Gruhn (1975, 1985) also has retracted on the issue of “equality” of partnership as the questions of the asymmetry in the power relations began to emerge during implementation of the various Conventions as the EC started to assert its dominance, equality in partnership began to lose credibility among academic writers.

This thesis argues the case that the issue of unequal partnership had always existed and is even more pronounced now than in the early period of the Lomé regime. It balances the views expressed from the European side which still hold fast to the neo-liberal thinking of political equality and those from the Caribbean and wider ACP States which assert the existence of an unequal partnership in economic strength.

The theoretical analysis of economic diplomacy examines the underlying issues that affect the decision making processes by linking the areas of negotiating theories. However, it seems that the precise and full acceptance of the application of the theories is inconclusive in addressing the bargaining concept in the power relations. The

acceptance of that realism by developing countries usually caused them to react by stone walling or delay negotiations in their effort to gain preferential arrangements (Mbirimi, 1988). However (Narlikar & Odell, 2006) argue that in order to gain more from a stronger state, it is better to approach the negotiations by adopting a missed opportunity strategy and develop the coalition bargaining around that strategy than to follow a strict distributive strategy. This, therefore requires that coalition members must negotiate among themselves over priorities and agree their joint defensive positions. The CARIFORUM States seemed to have applied this principle of coalition bargaining in the combination of strategies while negotiating with Europe because of the intensity of the negotiations. Firstly at the national level and even more importantly at the regional level to get consensus on their priorities and defensive positions¹⁹. This paradigm shift in the context of the CARIFORUM States negotiating processes is facilitated by the Cotonou Agreement which envisages the broad involvement of stakeholders in those processes.

The question of the asymmetrical power relations is critical to the hypothesis which argues the extent to which the type of relationships which exists between the ACP States and the EC has impacted the outcome of the negotiation for previous trade and cooperation agreements, but even more so, the negotiations between CARIFORUM States and the EC for the current EPA in the context of the non-cooperative bargaining theory and further argues that the trade diplomacy of CARIFORUM States in their relations with the EC is not reactive. Their approach to these negotiations has extricated them from the overall pattern of negotiation of the wider ACP Group and had unravel the paradigms in Caribbean's diplomacy from the generality of the findings of Mgbere, (1994) that the diplomacy of the ACP States is reactive.

Caribbean diplomacy had evolved, both within the Caribbean basin itself and internationally. It is deeply rooted in an historical context of resistance to domination,

¹⁹ Interview –Ambassador Henry Gill, June 10, 2009, Bridgetown, Barbados.

rooted in their belief in self determination, political and economic development and the desire to carve its own identity and shape its future, (Ramphal 1971, 1985, Demas 1972, 1976 & 1986, Levitt 1996, Sutton 1984, Hope 1986, Marable 1987, McAfee 1991, Mills 1991 and Courtman 2004).

So while this thesis raises no great issue with the generality of Mgbere's arguments from an all ACP historical angle, it takes the question one step beyond the Mgbere findings and examines the negative diplomacy of the all ACP Group to determine to what extent the paradigms in Caribbean diplomacy in negotiating the Economic Partnership Agreement was driven by an intrinsic desire to be proactive in defining and protecting CARIFORUM's self-interest within a narrow pathway between the construct of the realist and constructionist theories of diplomacy and therefore further exposed the negative diplomacy of the ACP States as a collective (Byron 2005, Hall & Chuck-A-Sang 2007, Bernal 2008, Stevens 2008, Girvan 2008, Arthur 2008 and Thomas 2008).

Barston (1988) defined diplomacy as the management of relationships between states and other actors and it involves an interaction where parties try to forge a position most advantageous to its interests. This usually involves bargaining either bilaterally or multilaterally. The negotiation processes is an exploration of ways to reconcile different positions to produce mutually acceptable outcomes or compromises and narrow difficulties. Bargaining is therefore an essential aspect of real life situations which must be faced practically through the negotiating processes once there exists the incentive to negotiate (Carraro, Marchiori and Sgobbi 2005, Iklé 1964) and Brady (1991) argue the importance of the historical relations, knowledge and familiarity in the negotiating process. Hirschman (1945) argued the importance of market size in gaining leverage in negotiations a position which is widely embraced. Therefore, the argument advanced by William, Duchesne & Meunier (2000) while cannot be ignored, the phenomenon of market size is not necessarily the most decisive factor influencing the outcome of a negotiation. For example, In the case of the negotiations for the CARIFORUM EPA with the EC, the size of the EC market seemed not to have been a grave factor for either

side. Nor, was the size of the CARIFORUM's market of great importance to Europe. However, the Europeans used the relative insignificance of the Caribbean Market to the European commercial interests as a reference point to make the argument that their crusade in promoting the EPA was not about a mercantilist approach to market opening by Europe²⁰.

The CARIFORUM States were offered duty free quota free access to the EC market, an offer which did not create any new opportunities because to a large extent these had existed under Lomé and Contonou. However, for the CARIFORUM States continuous access to the European market on the most favourable terms was more important than the size of the market, while for the EC, getting their global agenda moving forward on the so called Singapore Issues was very important.

In this regard, the approach to negotiations adopted by these small states is best suited in the negotiation models advanced by, Nash(1950 &1953),Schelling(1960) and Putman (1988). The CARIFORUM's position in the EPA negotiations seemed to have followed the Nash, Putman and Schelling approaches. Because, the Caribbean States used their own shortcomings and vulnerabilities to avoid making certain concessions and strategically to extract gains...

Zartman (1975) posited the view that the idea in negotiations is to seek compromises and his argument is reinforced by Brady (1991), who argues the importance of the history and culture of parties to a negotiation because where parties have a history of negotiating with each other, there usually exist a body of common interests which are well defined and which have brought the sides together.

On the question of market access, Meunier (2007) pointed out that the European Union has had a very formidable position and in their negotiations for market access, they use the size of their markets to leverage concessions and therefore maximize their gains.

²⁰ See bibliography for various speeches of Peter Mandelson, EU Trade Commissioner during the negotiations for the EPA.

However, this thesis argues that while the importance of their domestic markets and its value to exporters cannot be overlooked, the CARIFORUM States placed great emphasis on Rules of Origin (RoO) more so than the size of the EU's market as it was felt that this is an area which could bring better benefits to its manufacturers and food processors, because market access without commensurate changes in the RoO would not benefit the region any more than what had existed prior. McQueen (1982) argues the critical importance of the RoO to the industrialization for the ACP States.

This thesis while embracing the positions argued by Barston (1988) and Zartman (1975), has however questions the applicability of the generality of Meunier's assertions by applying the principles and theoretical concepts of non-cooperative bargaining in the context of the paradigm of the CARIFORUM States in the EPA negotiations and argues the findings that the agreement reached represents the optimization of what the CARIFORUM States could have bargained Bernal (2008), because, while the CARIFORUM States relied upon defensive and an offensive strategy they had very limited tactical options. However, the EC's strategy was one dimensional based on their global agenda, but it had a great arsenal of tactical options. Odell (2000) argues the value of employing tactics in forming and splitting alliances to gain concessions in a negotiation. But although the CARIFORUM States were limited in tactical options, during the negotiations they used every avenue at their disposal to form alliances and split support for the EC negotiators who appeared tentative at times, because even though the EC negotiators were confident as to their mandate, they were not oblivious of the power of public suasion and the parliamentary influences on the directions of the negotiations. The CARIFORUM complained heavily against the approach to the negotiations being pursued by the EC during the process, and relied on key players in the European Parliament and the "court" of public opinion to keep the EC negotiators in check²¹.

²¹ Interview- Sam Chandler, Barbados, June 10, 2009.

Methodology and definition of scope of research

The scope of the study covers the early period of the relations between the ACP States and the EC beginning with the signing of the treaty of Rome in 1957 up to the recently concluded CARIFORUM-EC Economic Partnership Agreement with the European Community, 2008.

The collection of data and information was done through structured and unstructured interviews to include taped face to face and telephone interviews, questionnaires. Also research of primary and secondary material to include electronic sources.

Further, the Author of this document was involved in monitoring the negotiations for the EPAs since the launch in 2002 at the all ACP level, first in the capacity of advisor to the Minister of Foreign Affairs and Foreign Trade of Jamaica between 2001-2002 and later in the Senate of Jamaica with speaking portfolio in the area of trade, justice and general governance issues. The Author also followed the negotiations closely while serving as a diplomat at the Jamaican High Commission in London, United Kingdom where his responsibilities included, but not limited to developing commercial links and businesses opportunities through the Jamaica Diaspora and the wider British business interests.

The questionnaire used as part of the field work were designed not only to capture the knowledge and views of those persons from the Caribbean who were involved in the early negotiations for Lomé and the recently concluded Economic Partnership Agreement, but also journalist, members of civil society, academics and persons from the business and commercial sectors throughout the CARIFORUM regions and to a lesser extent, the wider ACP and Europe.²²

²² For details of persons interviewed see bibliography.

A qualitative method of analysis is applied to the data and information in determining findings and presentation of arguments in the context of the theoretical considerations. The analysis of responses from interviews and paper based research indicate the following findings which are the basis of the arguments in support of the thesis.

Firstly, it is the commonly held view that ACP-EC partnership which started in 1963 under the first Yaoundé Agreement and continued through Yaoundé II (1969-75), the Arusha Agreement (1969) Lomé I-IV (1975-2000), Cotonou Agreement (2000-2007) and the current Economic Partnership Agreements was never an equal one²³. As if in a paternalistic and gratuitous manner the absence of progress in other international trade arenas was used by the Europeans as an argument against the ACP by consistently reminding them of the unique position they enjoyed under the EEC²⁴.

The two first agreements were never really negotiated instead they were handed down as part of the colonial arrangements with France and the EEC for its former Colonies and the Overseas Territories and Countries²⁵ as negative diplomacy was encouraged and embraced by the Francophone African States. However, while not discounting the value of the unequal nature of the relative economic strength of the EC in the relationship, some argue from a Sovereign Political position that there is equality at all levels²⁶. The theoretical strength of the argument is that the sovereign cannot be made

²³ Interview– Junior Lodge, November 11, 2008. WTO Geneva. Ambassador Owen Singh, London, UK May13,2009, P J Patterson March 3,2009, Kingston, Jamaica, Sir Alister McIntyre, Nov.14,2008, Kingston, Jamaica, K. D. Knight, Nov. 14,2008, Kingston, Jamaica,

²⁴C. H. KirkPatrick “Lomé I” *Journal of World Trade Law* Vol. 14. No. 4. (July –August 1980) p. 392.

²⁵ Interviews- PJ Patterson March3, 2009 & Sir Shirdath Ramphal, June 8, 2009.

²⁶ From the interviews conducted, a significant percentage of respondents (80+ %) have held the view that the long standing partnership between the ACP States and the EU has not been equal. The following respondents share such views: P.J Patterson, Sir Shirdath Ramphal, Sir Alister McIntyre, K.D Knight, Dr. Marshall Hall, Dr. Kusha Haraksingh, Prof. Norman Girvan, Anthony Hylton, David Prendergast, Ambassador Derrick Heaven, Ambassador Owen Singh, Ambassador Edwin Laurant, David Jessup, Gregory Downes, Junior Lodge, Dame Billie Miller, Branford Isaacs, Carl Grenidge, Mr. Greyory Downs, Ambassador Errol Humphrey, Clement Imbert, David Hayles, Ricky Singh, Greg Lockley, Phillip Williams, Nan Persaud, Ambassador Ellen Bogle, Joel Richards, Dav-Evnan Kowlessar,, Sam Chandler, Ambassador Henry Gill, Dr. Anthony Gonzalves,

to negotiate and it will exercise the sovereign right whether to negotiate. This fine, but important distinction underscores the political question of sovereignty, however that view seemingly rests in the narrow confines of the theoretical foundations of state relations, but as was pointed out and argued by many respondents, the realist views prevail at all times when dealing with the cut and thrust of international trade negotiations, where the need to advance and protect the vital interest of each party is paramount. Therefore, it seems that for ACP States, their equality in a sense seemingly rest only in the power of their numbers at the multilateral level ²⁷and nowhere else.

There are three main dimensions to the relationship namely; trade and economic cooperation; political dialogue and development cooperation. But, while the EC is the more powerful partner in all spheres of the relationship, the Cotonou Agreement seems to have infused some balance and provided legal certainty as to the future of the relationship. It ensured to some extent that “the relationship is not one of dominance but partnership among unequal partners”²⁸.

The general view across a wide spectrum of the respondents is that colonial attitudes are evident on both sides, because while the EU is inclined to assist the ACP due to its colonial linkages, with the expansion of its membership, the weight of the colonial affinity has been dwindling. However, some ACP States seemingly remain captivated within a colonial mindset while Europe has moved on. The quality of the relationship and the wider ACP’s approach to it is evidenced by their expectation of European political leadership to hold on to a non-reciprocal trade arrangements which the

Ambassador Fredrico Cuello, Neville Tataram, Achille BASSILEKIN III, Mrs Hélène Massan FIAGAN and Dr. Henry Jeffry, Those who took the view that the partnership was equal are in the minority, these include the follows: Mr Viwanou GNASSOUNOU, Elsa Fenet, John Caloghiro, Americo Beviglia Zampetti, Thomas Millar while Nigel Durant and Mr Morgan GITHINJI argued both sides.

²⁷ Carrington, Edwin: “*The ACP Group and its future in the wider international context*”. The Courier No.93 (September – October, 1985) p.73. NOTE. The ACP States and other developing countries banned in Seattle in 1999 and again in Cancun, 2003 to stop the developed countries in their efforts to move the trade agenda at the multilateral level which would not have benefit the developing countries.

²⁸ Interview- Junior Lodge, November,11, 2008.

Europeans never wanted in the first place, but acceded to the demands of the ACP States in light of the prevailing global political economy of the early to mid 1970s.

For example, most ACP countries still export raw materials to Europe that are then processed into high value agricultural products, garments or capital equipment. After more than 300 years of trade, the Caribbean exports of rum is still dominated by bulk rum supplies which is then mixed with other rums, bottled and sold in Europe where the economic value is captured by EU based firms. Similarly, the ACP sugar industry is dominated by the production of raw sugar which is shipped to the EU where the refining capacity resides. By the same token, Caribbean sugar refining capacity is rather very limited or indeed, non-existing. This is due in part to some inherent contradictions of the Lomé and Cotonou preferences; because all non-agricultural ACP exports attracted duty-free in order to encourage diversification of exports but ACP agricultural exports cannot compete due to the EU's above world market prices for sugar caused by the Common Agricultural Policy. Therefore, to export refined sugar to Europe under Lomé was not encouraged.

On the issue of ACP cohesiveness and solidarity, it is the view that the arrangements with the EU to negotiate the EPA with the ACP States in regions have impacted the ACP cohesiveness, unity and solidarity in some material respects. This seems to be an unassailable argument which is rarely challenged because what the EPAs have done is to remove the cover from the veneer of ACP solidarity in that while the EPAs were designed with the objective of promoting ACP regional integration, a number of ACP regional configurations did not make economic sense²⁹. For example, SADC included Tanzania a country that was part of a customs union (EAC) with two other countries that were negotiating as part of ESA.

Part of the problems which the EPA negotiations have exposed is an intellectual currency which left some ACP States not fully appreciative as to the extent that trade

²⁹ Interview- Junior Lodge. November,1, 2008.

negotiations with a powerful partner that is also a major donor can in fact become a powerful factor in implementing the requisite economic policy reform necessary which the recipient beneficiary may not be either ready or indeed equipped to implement. For example, in the case of the CARIFORUM, the region is split between CARICOM States and the Democratic Republic both of which are joined by an FTA that remained in a comatose state. While, the Bahamas remains outside of the CSME, but is a Member of CARICOM. So also, there is the CARICOM-DR Free trade Agreement which has not been implemented and the OECS which is a regional sub-group of the CARICOM which benefits from special and differential arrangements under the Revised Treaty of Chaguaramas. This there will makes it very difficult for the region to implement the EPA.

Notwithstanding its own challenges the CARIFORUM Group made several attempts at technical, ambassadorial and Ministerial levels aimed at developing common negotiating strategy or sharing intelligence and analysis among ACP regions. However, the unwieldy number of the ACP Group made this challenging.³⁰ The disconnect was long in coming, because it is the view that too often the Caribbean's engagement with the ACP was mired in the other Group's determination to revisit the philosophical basis of the EPA negotiations as adumbrated in the Cotonou Agreement. The Caribbean region had to take a more pragmatic view because they had endured an FTAA experience that served as a powerful reminder that the philosophical tenets of trade relations between developed and developing countries were being altered in large measures.

It has been long held, but open secret that the EPA negotiations merely exposed existing cracks within the ACP that were always there. For example, the Group spent one year trying to maintain a cloak of unity vis-a-vis the EC, while there were some regions which wanted to start negotiations early these being: the ECOWAS (West Africa) and CEMAC (Central Africa) even though as events unfolded they were the ones

³⁰ Interview- Carl Greenidge, June 22, 2009. Bridgetown Barbados.

where negotiations had been the slowest. It is further suggested that the Europeans had gleaned that the ACP Group was not united during the all ACP phase which created the opportunity for the EC to bring the negotiation to an early end without the ACP achieving the desired framework agreement.

It is now a settled position that the Uruguay Round of GATT which instituted the WTO has seriously exposed the vulnerability of ACP economies in global trade. However notwithstanding the existence of the trade arrangements between the ACP and the EC, European in negotiating GATT/WTO acted in its own self interest³¹ and understandably so³². The EC seeking a reciprocal trading arrangement with the ACP while the ACP wanted to keep the colonial trade relationship that was built on non-reciprocal market access. However, every new trade arrangement required a waiver from the WTO, a feat that proved increasingly more expensive to both preference recipient and preference granting Members. More importantly, both the CAP and EU made a collective assessment and concluded that unilateral preferences were not successful in addressing the supply side constraints of the poorer countries. This was the orthodoxy of the World Bank and some international donors and which also is enshrined in the WTO. In addition, the EC had an interest in exporting a model that was instrumental in its own economic development. Hence, one of the major focuses of EPA was to support ACP regional integration processes.

The ACP States had placed no reliance on the EC to protect the integrity and future of Lomé Agreements with the ACP States during the negotiation of the Uruguay Round of

³¹ Interviews- : P.J Patterson, Sir Shirdath Ramphal, Sir Alister McIntyre, K. D Knight, Dr .Marshall Hall,Dr. Kusha Haraksingh, Prof. Norman Girvan, Anthony Hylton, David Prendergast, Ambassador Derrick Heaven, Ambassador Owen Singh, Ambassador Edwin Laurant, David Jessup, Gregory Downes, Junior Lodge, Dame Billie Miller, Branford Isaacs, Carl Grenidge, Mr. Greyory Downs, Ambassador Errol Humphrey, Clement Imbert, David Hayles, Ricky Singh, Greg Lockley, Phillip Williams, Nan Persaud, Ambassador Ellen Bogle, Joel Richards, Dav-Evnan Kowlessar, Sam Chandler, Ambassador Henry Gill, Dr. Anthony Gonzalves, Ambassador Fredrico Cuello, Neville Tataram, Achille BASSILEKIN III, Mrs Hélène Massan FIAGAN and Dr. Henry Jeffry, Mr Viwanou GNASSOUNOU, Nigel Durant and Mr. Morgan GITHINJI .

³² Interviews- Elsa Fenet, John Caloghiro, Americo Beviglia Zampetti, and Thomas Millar also, Nigel Durant and Mr Morgan GITHINJI, PJ Patterson and Anthony Gonsalves shared the view that the EU had to protect its interest in respect the Major Trading Partners.

GATT/WTO. But, in many ways the ACP States failed to protect their interest. They participated marginally during the negotiations hoping that there would be some special development provisions for developing countries from which they could benefit while keeping the preferential arrangements with Europe. Indeed, there had existed an ambitious idea which sprung- up during the negotiations in terms of a development agenda for the ACP Group. The idea of an all ACP trade zone was being considered arising from the Uruguay Rounds to make ACP industries more competitive, however with the imposition of conditionalities, this idea was stillborn³³. Indeed, the imposition of conditionalities in the agreements which formed the basis of the relation between the ACP and the EC further explains the degree of imbalances in the relationship. So Also, the Aid package was always a main feature of the relationship with Europe. However, since the fall of the Soviet Union, a system of structured conditionality in aid policy³⁴ has been implemented by the EC for developing countries. The ACP States having committed themselves under the WTO could do very little to protect and advance the integrity and preservation of the Lomé or Cotonou Agreements under the GATT/ WTO Regime³⁵. They had committed to follow the rules of the WTO and adhere to the broad tenets of GATT. This was as essential feature of the waiver from the WTO which the EC received at the November 2001 Ministerial Conference in Doha. Under the terms of that waiver (from Article I of the GATT), both the EC and ACP committed themselves to have a WTO compliant trade regime in place by 1st January, 2008. This WTO waiver

³³ Interview- Ambassador Achille Bassilekin III, May 5, 2009. Brussels.

³⁴ Matheson, James, 'Institutional Capacity and Multiple Conditionality in ACP –EU Development' (PhD. Thesis, London School of Economics, 1997) p.101.

³⁵ Interviews – Anthony Gonsalves & Junior Lodge op. cit

was itself consistent with Article 37.1 of the Cotonou Agreement. Therefore, there was not much that could be undertaken to protect the regime as both sides acknowledged that these arrangements were temporary. Further, having signed Cotonou, it was virtually inescapable that the life of the one- way preferential trade was compromised beyond redemption. Indeed, the ACP had sent a clear signal on this issue when they amended the Georgetown Agreement in 2003³⁶.

The CARIFORUM States had faced serious challenges during the negotiations, challenges of resources, both technical and financial, logistics and institutional. However, the biggest challenge was that of forging a common CARIFORUM position. For example, the region held 14 meetings of the Technical Working Group on Market Access during the period November 2004 to December 2008 all aimed at reaching a regional position. Furthermore, EPA represented a major shift from Lomé and Cotonou arrangements. This proved most challenging for the region's political leadership and officials. The slow pace of implementation of CARIFORUM regional integration initiatives did not help in facilitating a smooth negotiating process, as the region was unable to resist the EC's arguments that it need to be more committed to the processes that the region itself had deigned but has failed to implement³⁷.

The success of the CARIFORUM States in negotiating the EPA can only be measured by the extent of the negotiating mandate. The mandate was to secure a trade and development agreement that would (a) support CARIFORUM regional integration processes while respecting the region's sovereign choices; (b) secure special and differential treatment that protects sensitive domestic production and government receipts; (c) secure long-term EU developmental assistance in order to adjust

³⁶ See Appendix III for the full text of the amended Georgetown Agreement.

³⁷ Interview- Junior Lodge, November 11, 2008.

Caribbean economies, advance competitiveness and be able to implement the Agreement in a pro-developmental manner.

While the CARICOM Secretariat did not play a lead role in the negotiations, it provided technical and diplomatic support. The secretariat had been an institutional member of the EPA College of Negotiators. Furthermore, the organization contributed four members of the 20 member college of negotiators who were alternate negotiators, but also as special advisor on Caribbean Single Market and Economy (CSME). Furthermore, the Regional Preparatory Task Force (RPTF) was co-chaired by the regional Authorizing Officer. In addition, the negotiations were overseen by Council for Trade and Economic Development (COTED), Council for Finance and Planning (COFAP) and the CARICOM Heads of Government all institutions where the CARICOM Secretary-General also sits and gives advice.

The data from the ACP Secretariat, Caribbean Regional Negotiating Machinery (CRNM), CARICOM Secretariat and the European Union are presented in format that does not address individual or country proposal in the main, but give the collective decisions. However, during the negotiation of the CARIFORUM-EC Economic Partnership Agreement, the actual discussions were kept quite confidential among the parties involved at the political level. Indeed, the political discussions at the level of the Heads of Government have remained classified and inaccessible to the public. The incumbent Heads of Government who participated in direct talks are excluded because of incumbency. Some of the political leadership that participated in the negotiations but who have since left office have been elusive. But the problem of access to the information has been overcome through access to submissions made to them by the principal negotiators and the directives provided to the technical negotiators as decisions taken by the political directorate. The interviews given by persons directly involved with the negotiations have also helped to elucidate an understanding of decisions taken at the political level.

It is quite early in the processes of implementation and the advances in the process are very slow. This phase of the agreement extends to the year 2033, and therefore is a work- in- progress. Many issues are still not yet settled and so very little information is available. The main institutions to oversee the implementation and management of the EPA have not yet convened.

Government official across the regions who were involved with the negotiation and are preparing the implementation phases are now more open to speak on some aspects of the negotiation and also the enormity of the implementation. So, apart from the published works of the CRNM, the literature on the negotiations and the implementation of the CARIFORUM EPA is very limited. Since the agreement has been signed all the signatory states have gone through the ratification processes.

The research is primarily based on primary sources which are analysed subjectively in this regard therefore it became quite imperative to rely on secondary sources including opinions and insights from eminent personalities to supplement and provide the contextual framework to arrive at a more comprehensive understanding of the primary sources. These personalities who were involved with the negotiations both at the technical and policy levels had no interests to serve other than to seek to carve the very best deal they could for their respective states and regions.

Contribution of research

The study of CARIFORUM's trade diplomacy with the EC contributes to the very limited academic work undertaken in this area of the region's external relations. The work exposes an avenue for Caribbean academics and scholars to begin to examine more critically the empirical data presented in this thesis and encourage further scholarly work on the region's commercial diplomacy.

The research further contributes to knowledge by the application and adaptation of the theoretical models of negotiation and coalition bargaining in international negotiations and explains how the CARIFORUM States negotiated the Free Trade Agreement with

the EC by an adaptation of the classic bargaining theory in international negotiation where one state or a group of states involved in a negotiation possesses superior power asymmetry. The theoretical premise outlined in the study draws on two approaches to negotiations, the cooperative and non-cooperative bargaining theories first expounded in the 1950's by John Nash as approaches to negotiations and coalition bargaining.

The work also contributes to knowledge by analysing the ethical dimensions of trade negotiations and exposed for the first time in a practical way, how small developing countries can in fact negotiate trade agreements with more powerful states and use issues of ethics, moral authority and fairness to gain concessions from a more powerful state or group of states.

John Nash (1950, 1953), in explaining the cooperative approach, defined bargaining as a situation which is created when two or more parties have engaged with a possibility of concluding a mutually acceptable and beneficial agreement and the parties have sought to resolve conflicts of positions on the assumption that no agreement can be imposed. He premised that in non-cooperative bargaining, cooperation cannot be ensured and only through negotiations that an agreement can be reached³⁸. It is argued that non-cooperative bargaining among states are more in keeping with the realist approach to international relations. In this regard, the CARIFORUM States had to adopt a two tier approach to the negotiations. Firstly, it had to negotiate within the coalition at the regional level to secure consensus by applying the cooperative negotiating approach in order to minimise conflicts which could be used by Europe to split the coalition (Bernal 2008) and then to adopt the non-cooperative approach to the negotiations with the EC.

³⁸ Carrere, Carlo, Marchiniori and Sgobbi, Alessandra. "Advances in Negotiation Theory", *World Bank working paper* 3642, The World Bank Development Research Group. (June, 2005) p. 3.

But, there must be a desire to negotiate based on an anticipated outcome which precipitates proposals as the parties try to define difficulties and identify common interests Iklé (1964). Zartman (1975) shares the view that in the basic model negotiations, there is the conceptualization which leads to the setting of agenda, outlining of the issues and an exploration of positions in an effort to narrow the gaps and get convergences in order to form the basis of substantive agreement.

The culture of the parties and to a lesser extent individual personalities are important in the process, though not operating at the same level of knowledge based on their history of negotiating with each other (Brady 1991). However technical competences play a significant role in the process, so also is the issue of research and mastery of the facts and their implications to the outcome of an agreement, so constant thinking and reviewing of approaches is an indispensable aspect of the negotiating processes (Watson, 1982). In the EPA negotiations, both the EC & CARIFORUM States had a long history of negotiations between each side and their colonial experiences. Indeed, these were the very foundation of the negotiations in the first place.

Negotiations at the Multilateral level are usually thwart with protection of self interests which are in most cases conflicting and therefore trade negotiations are about protecting domestic markets while seeking to maximise access to the markets of others through the principle of bargaining leverages . Therefore in trade negotiations the objective is to seek to gain the most by giving up the least and in this regard power relations are very crucial to the outcome of the negotiations (Hirshman 1945 & Sutton 1986). The side with the greatest bargaining leverage or the highest level of preference power is a defining element in the distributional outcome (Wagner, 1988). However, it is argued that the extent of bargaining leverage cannot be limited to the sheer economic power of one side vis a- vis the other, because in the dynamics of negotiations economic power is tempered by the wider desire to promote other interests of a greater magnitude than the power leverage in the particular circumstances. In the CARIFORUM-EC negotiations, the CARIFORUM States knew that Europe needed an agreement to

further its international agenda in promoting the “Singapore issues” which no other group was willing to negotiate and the value these could achieve for them. Therefore, the opening up of the trade regimes to the idea that government procurement is the way of the future in trade and secondly, and that it is a value added to even small developing countries .It was very crucial that the EC made such break-through with a group that did not have the capacity nor market share to affect Europe’s domestic markets. This created the leverage which the CARIFORUM States used to get the EC to make concessions even in areas where they were very hard pressed because of domestic concerns and international implications. The CARIFORUM, by applying an adaptation of a combination of Nash’s and the Schelling’s models and the two- level game theory expounded by Putman in international bargaining, explained the negotiating strategies of the CARIFORUM States and exposed their understanding of the region’s integration processes and a ‘two-sided’ domestic constraint. It challenges the assertions of Meunier (2007) and qualifies the conclusions of (Mgbere1994). In this regard,the work places the asymmetric problems of the CARIFORUM States in the context of their need for a desired outcome of the negotiations in the light of their national interests. It further argues the need for the EC to negotiate a new trade arrangement in keeping with the demands of its own domestic constituents and their wider international trade agenda.

Finally, the study contributes to the research of the influence of the EC in international negotiations and refute the argument that the EC superior negotiating machinery and strength of its markets are secured vehicles to influence and impose its external trade policies on developing countries and further that the ACP States are reactive in character(Mgbere 1994).

Assumptions and hypotheses

Contemporary writers such as (Meunier (2007) argues that the EC strength in negotiating trade agreements rest on its superior negotiating teams supported by the strength and size of its markets.

The study is based on two assumptions and a hypothesis, which are tested by applying an adopted combination of the cooperative and non-cooperative models of bargaining theory.

The assumptions are:

- (1) The EC decides what it wants from a negotiation and imposes its positions on the other weaker party and
- (2) The relationship between the parties is characterised by opposing preferences and asymmetry in economic power relations.

The study argues that notwithstanding the asymmetry between the parties, the EC negotiated an agreement in which the CARIFORUM States gained significant concession from the EC as pressure mounted for a conclusion within the stated deadlines.

The hypothesis states that the influence of the EC on the negotiations increased as the agreed deadline for completion approached, while the test determines the extent to which the EC's influenced the outcome of the negotiations by applying pressure towards the end and how the CARIFORUM use that pressure to gain concessions from Europe. The guiding literature on this aspect of the negotiations of the CARIFORUM-EC Partnership Agreement is very limited, except for official documents and statements from both sides, reports of meeting and interviews given.

Arrangement of the study

Chapter One: Growth and development of ACP-EC Trade Diplomacy. This covers: Introduction, European Colonial Interests and Part 1V of the Treaty of Rome, British Interests and its accession to the Treaty of Rome, Africa preparing to negotiate with Europe, West Indian first attempt at organising, The establishment of CARIFESTA and CARICOM, The Caribbean engaging the African and Pacific States, Final preparation for the negotiations with the EEC, Negotiating the Lomé Convention 1973-1975,

Formulating the Institutional Framework of the ACP, Establishment of the Lomé Regime, Cotonou and the Dismantling of the Lomé Regime and Conclusion.

Chapter Two: Negotiating the CARIFORUM-EC Economic Partnership Agreement. This covers:

Introduction, Establishment of the CARIFORUM Group of States, All ACP Launch September 2002, CARIFORUM Regional Launch April, 2004, Structure of negotiations: Ministerial, Principal negotiator and subject specific negotiators, Mandates, Divergences, The negotiating processes, The commencement and phases (1) Establishing priorities, (2) Convergence on strategic regional approach to regional integration (3) Structuring and consolidating the EPA and finalisation of agreed draft agreement, Initialling and final signing of the Agreement and Conclusion.

Chapter Three: A critical analysis of the provisions of the Economic Partnership Agreement. This covers:

Introduction, Reviews of the main provisions of the Agreement in the context of Free Trade Agreement and discuss the merits and potential difficulties of these provisions, Cooperation for development, Trade and trade related matters to include: trade in goods, investment, services and e-Commerce, Current Payments and Capital movements, Competition, Public Procurement, Intellectual Property, Public Procurement, Dispute Avoidance and Settlement, The Institutional Provisions and Conclusion.

Chapter Four: Addresses the problems of implementing the EPA. This covers:

Introduction, Review of the implementation processes and analyses of the main challenges to the implementation of the EPA to include capacity building and adjustments, custom measures, regional integration and the Caribbean Single Market and Economy (CSME), Harmonization of Competition Policies, building regional

institutions, the role of the Regional Trade Court (CCJ) and Recommendations for implementing the Agreement.

Chapter Five: Assesses the Ethical Issues in the Negotiations of the EPA. This covers:

Introduction, Exploration of the ethical issues arising from the negotiations, Involvement of NGOs' and Private sector interests, the EC stance and strategies, fairness and respect for the principles of Sovereignty and Conclusion.

Conclusions. This covers: Review of the arguments, findings, assumptions and hypotheses.

CHAPTER ONE

The Growth and Development of CARIFORUM-EC Commercial Diplomacy and Trade Relations

1.1 Introduction

The CARIFORUM-EC diplomatic and trade relations have their foundations in the early European colonial expansion and its underlying political economy and mercantile system of trade which are the embodiment of the Part IV of Treaty of Rome. The relationship has traversed and is intertwined with the establishment of the Africa Caribbean and Pacific group of States (ACP) under the Lomé Regime of 1975.

Part IV of the Treaty of Rome has preserved the colonial linkages between Europe and its former Colonies. The inclusion of those colonies into the Treaty created the opening for the Yaoundé Conventions of 1963 and 1969 between the European Economic Community (EEC) and the newly independent Francophone African States. The Lomé conventions, Cotonou Agreement and the current Economic Partnership Agreements (EPA) are successors to the Yaoundé Conventions. The CARIFORUM States diplomatic and trade relations with the European Union (EU) are the outcome of France's intervention which gave rise to Part IV of the Treaty of Rome and so the relationship is therefore a creature of historical and mercantile trappings.

The ramification of France's intervention and insistence to have its Overseas Countries and Territories (OCTs) included in the Treaty Of Rome is the alignment of the contextual framework of the major post World War II developments that undergird the global political economy and trade architecture which have facilitated the viability of the European System as a policy making and enforcement institution. The alignment exposed two parts.

Firstly, external linkages to the United Nations(UN) and the Bretton Woods Institutions, the International Monetary Fund (IMF),the International Bank of Reconstruction and Development (IBRD- World Bank), and The General Agreement on Tariffs and Trade

(GATT) to which, all of the original six signatory States of the Treaty of Rome subscribed and the roles the latter three institutions played in facilitating the Lomé regime in the first instance and also in the eventual demise of that System and secondly, the internal linkages which inextricably bound the economies of the African States to the economic structures of the European mercantile system.

During the discussions to set up these global governance institutions, none of the Overseas Countries and Territories (OCTs) of France or any of the European powers participated as those countries and territories had no competence in international law. The United Nations (UN) was established to preserve world peace and stability through dialogue and joint action, a further remit of the United Nation (UN) was to usher the new era of decolonization, beginning with India and Pakistan³⁹ while the International Monetary Fund (IMF) has responsibility to oversee the global financial system and its sister organization the (World Bank) was to undertake reconstruction and development. The General Agreement on Tariffs and Trade (GATT) has the responsibility for ordering the global trade regime.

In light of these development and the various nationalist political liberation movements which were gaining currency in the colonies, France wanted to hold on its colonies by extending Associate Membership of the European Community (EC) to them at the very last moments of the negotiations of the Treaty of Rome. It is further contended that the establishment of Part IV was a hurriedly assembled instrument created for the specific and singular purpose of the French Colonial interests, which has now evolved and come to be used by Europe to incorporate other developing countries.

The purposes for the extension of the Part 1V Regime in 1969 was firstly, to engage and facilitate British entry into the EEC⁴⁰, a political policy decision that had consequences not just for the political configuration of African economies, but also

³⁹ Pakistan gained political independence from Britain on the 14th August, 1947, one day before India.

⁴⁰ Schiffman, Charles: A Negotiation and a Convention. *The Courier* No. 31, Special issue (March 1975), 3.

those of the Caribbean and the Pacific States in the EC's development mechanisms. These decisions were taken in a manner reminiscent of how the World came to be divided under the Treaty of Tordesillas in 1494⁴¹ and secondly, to quell old rivalries among European colonial powers which had existed for many centuries which was been played out in the first stages of Britain's application to join the EEC.

The manner in which Part IV of the Treaty of Rome was created and then extended is a classic case of how existing colonial attitudes had been transported into a reconstructed global political, economic and trade landscape. The instrument of Part 1V of the Treaty of Rome became the substratum of the political economy of the ACP States and hence an integral part of their current difficulties, because the Treaty of Rome in its wider trade contextual frame work falls within the governance structure of the GATT regime. In essence therefore, as Europe evolved so did it impacted the GATT/WTO regime, and as the global trade structure and institution evolved the ACP States have been impacted.

It seems that Part IV of the Treaty of Rome was conveniently used as a response to create a development policy for former European colonies, thereby extending the instrument to cover the type of cooperation for which it was never designed or intended. So, as Europe grew in stature, confidence and sophistication, it reformed and build its economies and internal markets while creating a large network of bilateral trade and cooperation agreement with other developing countries using under Part 1V of the Treaty while whittling away at the Lomé regime, quite cognisant of their experiences and the quality of the regime, its implementation and the process that brought the parties together in 1975. Lomé had never been consistent with Europe trade design and the direction in which Europe had wanted to go with its former colonies in the first place, but for the insistence of France for its own self interests.

⁴¹ The Treaty of Tordesillas divided the New World in two geographic zones by decree of Pope Alexander 1V on May 4th 1494 by establishing an imaginary line running North to South through the middle of the Atlantic that divided the East and West. Spain took possession of all unclaimed land to the West of the line and Portugal took possession of lands to the East.

The Lomé regime was created in 1975 with both sides quite cognizant as to what each was trying to achieve. So, Europe conceded to the demands of the ACP States reluctantly but soon after, it systematically started to whittle away at what it had originally offered in Lomé given the existing threats to the geopolitical and global economy between 1973 and 1975. For Europe, Lomé was always a temporary arrangement and a “window” of opportunity for the ACP States to adjust their economies and determine their course of development while guaranteeing Europe’s source of raw material and energy and markets for its manufactured products.

The ACP States also had their own global agenda to use the Lomé regime as a “litmus” to advance its cause for the re ordering of the existing global economic and trade regimes. So, while the 1980s was a period when the process of Europe’s reclamation commenced with the debt crises coupled with the failure of United Nations Conference on Trade and Development (UNCTAD) to resolve the trade issues for which it was established, the launch of the Uruguay Round of GATT coupled with the United States opposition to the Third world initiatives to re order the global economic structures sounded the “death knell” of the New International Economic Order (NIEO). The ascendance of the Washington consensus and the introduction of conditionalities through the IMF and World Bank followed by the fall of the Berlin Wall in 1989, allowed Europe to seize the first real political opportunity to revamp the Lomé regime and created another regime more reflective of the new Europe and its global reach.

So, by the time the Maastricht Treaty was signed and the completion of the reform of the European internal market, coupled with the establishment of the new GATT/WTO regime, the Lomé regime had effectively ended. Europe over time had moved on and Lomé had served its purposes and a new relationship had to reflect the conditions and thinking of the reformed Europe. Therefore, WTO Ministerial⁴² in Seattle in 1999, failed to reach consensus to liberalise world trade for the Millennium Round of trade negotiations. So, Europe, in 2000 replaced the Lomé regime with the Cotonou

⁴² Seattle Ministerial held November 29th to December 4th, 1999.

Agreement⁴³. This new Convention sought to align European external trade policy with the GATT/WTO, a global regime in which processes and development had very little to do with the input of the ACP States notwithstanding their larger numbers in the Organisation. This alignment is consistent with where Europe had intended to go with the principles of reciprocity when it negotiated Lomé in 1975.

Twenty-five years after the establishment of the Lomé Regime, the ACP States had been effectively circumvented and North-South relations took on new dimensions and direction as the Doha Development Round of GATT/WTO was launched. Therefore, the processes by which Europe got the ACP States to commence negotiations for the Economic Partnership Agreements within regions of the ACP Group have exposed the fundamental character of the Lomé regime as a temporary measure more in the order of a holding position which explains the construction of the regime as a trade “pause” diplomatically crafted for its time. This, it is argued, is the essence of the long-term effect of Part IV of the Treaty of Rome, an instrument which was designed specifically for the purposes of French colonial interests, but later extended to the ACP State at their insistence without any meaningful change to its original construct. Part IV of the Treaty of Rome was never intended to foster industrialisation of the South and has therefore not done so.

This Chapter analyses the development of ACP–EC diplomatic and trade relations in the context of the architecture of European political economy through an examination of the economic, historical, ideological and legal underpinnings. The focus is not to argue the contents of the various conventions, but instead to critically examine the fundamental construct of the Lomé regime in its contextual and conceptual framework, its merits, processes and weaknesses.

Further, to argue the regime as part of the preserve of Europe’s political economy and global profile which remained the cornerstone of the relationship and to make the case

⁴³ The Cotonou Partnership Agreement between ACP States and the European Union was signed in Cotonou, Benin On the 23rd of June 2000. It replaced the Lomé Convention.

that the Declaration of Intent 1963 was a politically calculated initiative designed to end the vestiges of the Yaoundé model, but instead has served to extend them to the British in the main and by extension to other European Countries as a short-term response to move the EEC processes forward. And also, to highlight how the ACP States, but more particularly, Anglophone Africa and the Caribbean States took advantage of those calculations, to question Europe's role in international trade and development cooperation and further to pressure Europe into embracing an agenda born out of their desire to redress the imbalances in the global economic architecture which was designed to benefit the North and to preserve the *status quo*.

Additionally, to argue the extent to which the principles of mutual respect, fairness, solidarity and equality in partnership were evident in the exchanges and responses to the Lomé regime, which was unprecedented and bold, but a convenient trade 'pause' which is now spent and finally to explain the characteristics of the regime as a 'pause', suited and diplomatically crafted for its time. The agreement was meant to change the level of inequities of the past through cooperation and mutual dependence⁴⁴. But has failed in those regards.

The chapter addresses the relationship in two phases. Firstly, the early years and argue the impact of colonial interests and attitudes on the outcome of the negotiations, ACP's preparation and the negotiations of the first Lomé Convention emphasizing the emergence of Caribbean diplomacy and its contribution to the establishment of the ACP group, its cohesiveness, solidarity and unity. Secondly, the Lomé regime, its philosophical construct, intent, and actual implementation and argues the rise and fall of the regime within the power dynamics of Europe's internal transformation and the global political economy and trading system.

⁴⁴ Patterson, P.J 'Major challenges face the ACP' *The Courier* No.93 (September – October, 1985) p.79.

1.2 European colonial interests and Part 1V of the Treaty of Rome

Articles 131-136 under Part IV of the Treaty of Rome established the Associated status for the Overseas Countries and Territories of Belgium, France and Italy. These articles, when read in conjunction with the enabling intent of Article 238 of the Treaty which empowers the community to enter arrangements with third countries or unions or union of states or international organizations creating Associations with reciprocal rights and obligations.

France argued for the inclusion of the OCTs because of the following reasons; (1) a central theme of the model is that it treaded the OCTs as part of France and its Caribbean Territories of Martinique and Guadeloupe as overseas departments. The inhabitants of these territories were seen as French and (2) the OCTs were excluded from trading outside the Franc Zone which was a protected area against foreign competition. So important was France's interest in its colonies and former colonies that it pressed for their inclusion in the Treaty of Rome as a *quid pro quo* for its signature⁴⁵.

Three years after the establishment of the EEC the decolonization process provided for under Charter of the United Nations to which the six signatories of the EEC had subscribed took a quantum leap and French colonial holdings began to be impacted. Britain which at the time was not a member of the EEC had by then started to give up her colonial holdings commencing with Pakistan and India. A wind of anti-colonial and imperial domination was blowing through Africa in which Dr. Kwame Nkrumah⁴⁶ played a key role in achieving political independence for Ghana from Britain in 1957. That experience opened the window of possibility for Independence movements in other

⁴⁵Akosa, Mabel, Ogechukwu, 'The Diplomacy of the ACP States in their relations with the EEC 1972-1980'. (PhD thesis, London School of Economics and Political Science, London, 1985) p. 21.

⁴⁶ Dr Kwane Nkrumah was a leading Proponent of Pan-Africanism and a critic of Colonial Europe and Imperialism. He became President of Ghana in 1952.

African Countries, so Nigeria followed in 1960 and the nationalist movement continued spreading across Africa and into the Caribbean⁴⁷. The French Colonial Empire had been seriously threatened⁴⁸ and by extension its economy and trade arrangements.

1.3 British accession to the Treaty of Rome

While six European States went ahead and established the EEC, Britain which held over two thirds of the existing colonial territories globally, did not see itself as part of Continental Europe and was not involved in the negotiations for the Treaty of Rome. Britain felt that it could rely on the Sterling area to rebuild its economy. Britain had the Commonwealth which predated the Treaty of Rome, but it was beset by problem. South Africa, had threatened that if Ghana was allowed to join the Commonwealth after independence it would withdraw membership. That threat was challenged by the other African Commonwealth States which by then had grown in numbers. It was South Africa instead which suffered as its application to re-enter the Commonwealth had to be withdrawn in light of very strident opposition at the Commonwealth Conference in 1961⁴⁹.

Britain's decision to join the EEC under Harold MacMillan's government came shortly after. It had been a commonly held view that the Government's decision to take Britain into the EEC was precipitated on the power base of independent African States that had begun to influence decisions in the organisation⁵⁰. Whether Britain's application to join the EEC was in fact based on Commonwealth issues or on matters of economics, the decision to look to Europe was destined to create some dislocation both in Europe itself

⁴⁷ Jamaica gained political independence 6th, August 1962 & Trinidad and Tobago on August 31st, 1962.

⁴⁸ After World War II France was engaged in the Indo-China conflict and lost colonies in 1954 when North and South Vietnam emerged. There were also tensions building in Algeria.

⁴⁹ Mgbere, John Chinwi, 'Cooperation between the European Community and the Africa, Caribbean and Pacific Countries (1957-1990)' A Study in Group Diplomacy (PhD thesis. London School of Economics and Political Science, 1994) p. 76.

⁵⁰ Ibid p. 76.

and among its former and existing colonies. Prime Minister MacMillan assessed the problem when he observed that the issue was not one as between the Commonwealth and the Community but how to reconcile the institution of the Commonwealth with the new and expanding Europe. Both Jamaica and Trinidad and Tobago, being the only two independent Commonwealth States in the Caribbean at that time had opposite views on the issue. While, Trinidad and Tobago supported Britain's entry into the EEC as Dr. Eric Williams felt that the initiative would benefit the region, however, Alexander Bustamante of Jamaica was not in favour as he felt that the Commonwealth would be hurt by the move⁵¹.

The creation of Part IV has remained a source of problems for the EEC from its inception as its intent is indicative of French Colonial thinking and protectionist policy approach to external trade. Indeed, because the regime was crafted with French colonial interests predominantly, as the EEC expanded its development policy the purposes of the Part IV instrument seemed to have shifted but without coherence. Europe had become so accustomed to using the instrument of Part IV quite selectively and at will, to either include or exclude whichever State or group of States it saw fit, for example, it excluded the Asian Commonwealth Countries on the occasion of Britain's application to join the EEC. However, under the United Kingdom Treaty of Accession, Asian Commonwealth countries were not offered association in a declaration of intent of the EEC, they were given the assurance that the EEC would be ready to seek appropriate solution for their problems which may arise in the field of trade. This, it is argued was in keeping with the EEC's attempt at initiating a common aid policy vis-à-vis the whole Third World⁵².

⁵¹Mgbere, John Chinwi, 'Cooperation between the European Community and the African, Caribbean and Pacific Countries (1957-1990): A Study in Group Diplomacy' (PhD Thesis, London School of Economics and Political Science, 1994) pp. 85-86.

⁵²Friedeburg, Alfred S. "The Lomé Agreement: Cooperation rather than confrontation" *Journal of World Trade Law*, November – December 1975 p. 691.

This instrument was not designed for countries with competitive manufacturing base as the EEC and so would not be extending it to aid development through industrialization⁵³.

The British Model of Colonialism however, had some marked differences from that maintained by the French in that the British saw their colonies as mere suppliers of raw material and consumers of British goods and services and were never made part of the metropolitan arrangements. In short, the relationship was one of convenience⁵⁴, Britain and France had been great European rivals well over centuries, the major World Wars did not resolve the issues of their cultural and historical divergences in outlook. Those divergences have accounted for Britain's original absence from the negotiations for the Treaty of Rome and were alive even at the eventual Accession and Membership of the EEC. France had vetoed Britain's first two Applications to accede to the treaty in the early 1960s. It took Britain almost a decade to Join the EEC and only did so with the full support and collective activism of the other five signatory States, which had manifestly decided to end France's manipulation on the occasion of the signing of Yaoundé II in 1969 by implementing the terms of their 1963 Declaration of Intent.

So, after the conclusion of Yaoundé II the other five European State made the acceptance of their intent and willingness to extend the agreement or other similar instrument to other developing countries with the similar economies a quid *pro quo* for their signature⁵⁵.

They had effectively encircled France which gave in to their demands, so even before Yaoundé II was ratified by them, the six Member State of the EC at their summit on December 2, 1969 in the Hague, unanimously agreed to resume negotiations for Britain's accession. The Yaoundé II which was signed in 1969 had a life of five years and would expire in 1973, so was the Arusha Convention. By the time Britain's

⁵³ Okigbo, P. N. C, *Africa and the Common Market*, London, Longmans, (1967) p. 72-73.

⁵⁴ Cable, Vincent, *British interests and Third World Development Overseas Development Institute*, London, (1980) pp. 9-10.

⁵⁵ Schiffman, Charles: 'A Negotiation and a Convention' *The Currier* No. 31- Special issue (March 1975) p.3.

application was accepted, the European agenda which Britain had elected to follow meant some changes had to occur in respects of its trading arrangements with former colonies.

The reverberation of the decision of the Hague summit was felt throughout the British Commonwealth of Nations and the urgency to act was self explanatory, particularly for countries of the Caribbean which were all too aware that the Europe's real interests loomed largely in Africa's minerals and energy sources, and with only rum and sugar in the offing, the interests of the Caribbean region could be threatened. The stage had therefore been set to create new relations, a challenge the Caribbean had to accept.⁵⁶

The Hague decision also exposed two intrinsic but diametrically opposed elements of Protocol 27 of the Treaty of Rome, namely its merits and weaknesses. Because, while the Yaoundé and Arusha Agreements were made at a time when Britain was not party to the Treaty, the power dynamics of the internal arrangements of the EEC had changed and new considerations had to be confronted.

The problems were many and intricately bound with the historical relations lasting many centuries which could not be simply rearranged. For example; the size of British colonial expanse and its potential impact on EC's internal market and budget ,so also the need to address concerns which surfaced throughout France's earlier efforts in frustrating Britain's attempt to join the EEC, there the newly independent Anglophone States particularly Nigeria never sought to embrace Europe even after the 1963 Declaration of Intent⁵⁷.

The impact on preferential arrangement under Yaoundé was also a problem because even before the second Yaoundé Agreement was ratified by some African States, another milestone in the world trade regime was pressing upon Europe and in response Europe introduced the Generalized System of Preferences (GSP) in July 1971 on

⁵⁶ Interview- PJ Patterson, Kingston, Jamaica, March 3, 2009.

⁵⁷ Schiffmann, Charles Op.Cit. p. 3.

certain manufactured goods. That development, coupled with the gradual duty reduction under GATT beginning with the Dillon and followed by the Kennedy Round of 1964 had begun to impact the privileges granted under the Yaoundé regime. These were issues which affected the stability of the political economy of Europe in the context of its internal arrangements and also its global responsibility for which it had contracted to cooperate and therefore obliged to respond.

Britain's policy had by then become focused in the industrialized world. This new focus meant that North-North relations had priority over North-South, as Britain had by then come to accept and believed that its future rested with Europe and not in their former colonial empire. However, there were residual issues which had to be addressed as part of the way forward on both sides of the economic and geo-political divide.

The South came to realize that the "umbilical cord" that bound the relationship could not be severed neither contemporaneously nor permanently, but can only be adjusted over time for the relationship to begin to bear some semblances of fairness, mutual respect, solidarity and the preservation of the right of self-determination as expressed under the Charter of the United Nations while demanding equality in partnership for international cooperation.

British policies towards the developing South became short-term and was crisis determined⁵⁸, because with a declining empire and domestic problems of reconstruction, Britain had to rely on special but not sustainable arrangements with its former colonies for its market outlets. But as in the case of France it could not afford to relent on those markets built up over centuries, even upon entry into the ECC. The protection of British external markets and domestic economy was vital. So, both Britain and France wanted to protect their markets through theegis of the economic and legal construct of the Treaty of Rome by holding onto aspects of their past, while contemporary Europe was looking to protect its markets against the wider transatlantic

⁵⁸ Cable, Vincent: Op.Cit. pp. 9-10.

threats. There were underlying differences and uncertainties within the ranks of the Membership of the EEC with respect to a forward strategy in light of the existing policy paradigms. The level of unity within the group was suspect and uncertainties prevailed.

It appeared that neither Britain, France nor the EEC itself had any clear vision or firm strategies to harness and drive the shift in their policies towards the former colonies mainly in Africa in light of the African responses, political profiling and expressions of the political leadership of the 1960s, particularly among the newly independent Anglophone countries. So Europe also, as in the case of the African and the Caribbean was searching for a way forward.

Therefore, while the problems of Europe in relation to Africa in the new dispensation of political independence was to recalibrate the old colonial template of trade relations and in the changing order to suit its agenda, the Africans were organizing, planning and searching to determine and define a way forward and a mechanisms to rebuild Africa for the benefit of Africans within the global economic super structure which they had come to realize was not designed to benefit their development. It is argued that with matters of trade reform being stymied in UNCTAD and the United States showing interest in Latin America, Africa and the Caribbean had to advance their cause through the only viable course opened to them to impact changes in the global trade architecture by looking to their former colonial masters. Indeed, the Lomé negotiations then were the only “show in town”⁵⁹. The Caribbean however was concerned that the region would be left behind if it failed to join with the African States. Therefore, their first objective was to unite the Caribbean and then work with the African States to unite them and then as a united body of African and Caribbean State they would be better able to confront Europe⁶⁰.

Both the ACP States and the EEC were now on a collision course in circumstances that could possibly bring an outcome which neither Europe, neither Africa nor the Caribbean

⁵⁹ Interview- Sir Alister McIntyre, Kingston, Jamaica, November 14, 2008.

⁶⁰ Interview- Sir Shirdath Ramphal, June 8, 2009. Bridgetown, Barbados.

could safely predict. It was Europe, not Africa which had to find a way to stave that pending confrontation. It is within this contextual framework, that the Lomé regime provided a well needed and welcomed respite for Europe to stave such possible confrontation and saved its industries from collapse as they depended heavily on raw material, energy sources and mineral resources from Africa mainly and to a lesser extent the Caribbean and the Pacific States⁶¹. Indeed, during the negotiations for Lomé I, then British Minister in charge of trade approached the Caribbean delegation and the Chief negotiator for the sugar protocol, seeking re assurances that the ACP would protect supplies of sugar to the British factories at a time when world market prices were very favourable to exporters and there were major shortages of the product across Britain⁶².

The Organisation of the Petroleum Exporting Countries' (OPEC) oil price increases of 1973-1974 and the subsequent recession which occurred at the time of the negotiation coupled with the threats of formation of Commodity Cartels merely exacerbated the anxieties of Europe which influenced the outcome of the negotiations. But those activities in and of themselves had not offended the fundamental thinking and injunctions which undergirded the creation of the Lomé regime. But, instead they seemed to have justified and defended the very core of the hypothesis which expression explains the characteristics that define the Lomé regime as a mere trade 'pause' so astutely crafted to meet the urgency of a response at a most crucial juncture in European relation with its former "colonial servants", which were demanding equality of partnership by sitting at the negotiating table, with a mission to obtain redress and balance in their relationship.

The events which ensued was a coming together of a group which saw themselves as victims of a colonial structure perpetuated for many years, that gave them political independence without any concomitant economic power and had been left to so exist in

⁶¹ Interview- PJ Patterson, Kingston, Jamaica, March 3, 2009.

⁶² Ibid.

a global economic structure, already set, not to serve their interest, but that of the very architects who designed it. The pending meeting of Europe and its former colonies was destined to be one of unprecedented discourse.

1.4 Africa preparing to negotiate with Europe

The move to establish the Organization of African Unity (OAU) was designed to unify Africa, but the Organization was mired in difficulties due to political feud and narrowness in thinking of some leaders, the wide differences in cultural orientation coupled with tribal nepotism among the newly independent states⁶³. Africa had never been united, and was kept that way ostensibly, because of the European Colonial rivalries which necessitated such exploits for its own gains⁶⁴.

By the mid 1960s most of the African Anglophone and Francophone countries were politically independent but were far from been a united group. There were divisions among them varying from ideological to socio-cultural orientations. Those divisions had undermined their efforts to organize Africa under a unitary structure. Part of their difficulties had their genesis in Part IV of the Treaty of Rome which conferred associate status for eighteen African States and Madagascar (AASM) comprising fifteen French, three Belgian, and one Italian⁶⁵ former colonies.

Shortly after the signing of the Treaty of Rome, Ghana, an Anglophone African State had proclaimed independence about ten years after India and Pakistan got statehood. Pan-African political leaders were campaigning for a united Africa to develop its own resources and towards industrialization for economic independence of Africa. However African unity was elusive until 1963 when the Yaoundé Convention was signed with the

⁶³ Akosa, Mabel Ogechukwu: Op.Cit.pp24-30.

⁶⁴ Rodney, Walter : *How Europe Underdeveloped Africa*, Howard University Press, (1982) p. 149.

⁶⁵ Benin, Burundi, Cameroon, Central African Republic, Chad, Congo, Gabon, Guinea, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia, Togo, Upper Volta and Zaire.

AASM after it was presented for signatures 'to take' or 'leave it'⁶⁶. The Francophone African States had become accustomed to negative diplomacy, a phenomenon which seemed to have persisted throughout the entire period of the ACP-EC relations.

At the end of the Commonwealth Prime Ministers' Meeting in London in September, 1962 the African delegations left convinced of the urgency to unite Africa. However, the model to be followed was contentious. The Brazzaville, Casablanca and the Monrovia groups had different ideas as to the way forward. However after the signing of the Yaoundé Convention in 1963, the African States became embroiled in a divisive political discourse which was resolved through the intervention of Nigeria which by then had been articulating African unity. It negotiate a comprise which laid the foundation for the eventual establishment of the Organisation of African Unity (OAU) in May 1963.

African unity was forged through the expression of the Declaration of the Monrovia group which emphasized economic cooperation and non-interference in each other internal affairs.⁶⁷ This newly found unity created the opening for the wider unity and solidarity which continued into the Lomé negotiations and the eventual formation of the ACP group of States. The role and involvement of the OAU was very instrumental in this regard.

When Nigeria opened negotiation with the EEC in 1965 that move had caused uneasiness among some members of the union, but the resulting agreement was never ratified and the Arusha Accord signed in July 1968 was never implemented. So, also Ghana's attempt to negotiate an agreement with Europe in 1966 was later abandoned.

The fragile unity in Africa became threatened in 1969 after the 2nd Yaoundé Convention was signed. This threat was exposed because of the compensation package offered to the AASM arising from the imposition of the GSP which took effect in 1972 and the duty reduction under GATT. The acceptance of the package by the AASM created a problem

⁶⁶ Akosa, Mabel,O. Op.Cit.p 23

⁶⁷ See Charter of the Organization OF African Unity (OAU).

for many African States which fostered further divisions because the Francophone African States were in support of the Yaounde package. Again, this package was never negotiated as the negative diplomacy embraced by the Francophone African States which was encouraged by Europe had prevailed and the other African Member States of the union became uneasy.

The newly independent African States were for the most part suspicious of the aid package of the conventions and were also very opposed to the principles of reciprocity. The AASM felt they had to accept it because they had no alternative. By then it became clear to most African States that in this existing global political economy, the balance of power did not reside in Africa or indeed the South which made them even more sceptical of the Europeans. The United Kingdom was about to join the EEC and the divisions in Africa was exposed to possible exploitation by the Europe in the pending negotiations, a position which Africa could ill afford. Again it was left to the diplomatic efforts of Nigeria to hold the unity which has been earlier forged⁶⁸.

In the new dispensation of the Britain's Accession, African States began to re-visit the issue of their relationship with Europe, a discourse which opened up old wounds and a renewed resistance to European control of African resources.⁶⁹ So, the Africa States searched for a common ground as the leaders of the newly independent states realized their dilemmas in the spheres of international trading regimes arising from the capitalist imperial systems for which they were not properly prepared to participate.

Britain's pending entry into the EEC was causing problem for some for African States as they became sceptical. So, while Britain was preparing for a future in an enlarged EC, some African States were forging a new unity to confront Europe in the pending negotiations.

⁶⁸ For a full discussion of the African States efforts to unite for the negotiations see Akosa, Mabel, Ogechukwu, 'The Diplomacy of the ACP States in their relations with the EEC 1972-1980'. (PhD thesis, London School of Economics and Political Science, London, 1985) Chapter one.

⁶⁹ Nkrumah, Kwame *Neo-Colonialism: The last Stage of Imperialism*, (Nelson, London, 1965) p. 8.

Some African leaders believed fundamentally that the intention of the Europeans and also the British was design to pave the way to continue the exploitation of African economies for the benefit of European and Africa would become the dumping ground for European manufactured goods and thereby discourage African industrialization.⁷⁰

So, as the African States consolidated their unity, the EC on the eve of its first enlargement had to contemplate negotiations for a new trade arrangement with them. But, this was not to be, because as the Africans searched for new strategies to develop their relation with the EC, the Caribbean was also searching for a way forward in dealing with the effect of Britain's entry into the EC on the economies of the region.

1.5 West Indian Federation: The Caribbean's first attempt at organising

By the time Britain made its third application for Membership of the ECC, the Caribbean had already gone through two attempts to organize and was at its third. The first attempt was made during the World II as part of war time efforts by the United States of America and allied World War II colonial interest to organize the West Indian islands as a unitary system.⁷¹ The initiative was not sustained because it was not designed with the necessary political and social infrastructure for sustainability. It was merely a war time effort.

After World War II, the Caribbean took the opportunity to foster a Caribbean indigenous input in organizing the region through political action, organized labour and the creation of other regional institutions including the establishment of the first university located on West Indian soil.⁷² But, Britain wanted direct involvement in the efforts to organize the

⁷⁰ Julius K Nyerere, Former President of Tanzania was a leading voice in the Group of 77 Non-Aligned Movement and a constant critic of the policies of the North.

⁷¹ Lewis, G. K. *The Growth of the Modern West Indies*, MacGibbon and Kee, London, New York, (1968) p. 350.

⁷² The labour movement which was aligned to various political parties was granted prominence through the Caribbean Labour Congress formed in 1945. There was the West Indian Bar Association, the Caribbean Union of Teachers, The Federation of Civil Servants of the West Indies and commodity association such as the

Caribbean and therefore had established a commission to investigate conditions in the West Indies. The report which followed formed the basis for attempting to federate the West Indian islands as a unitary state.⁷³ The Caribbean's next experience at trying to unite was through the democratic process. The West Indian Federation was established on the 3rd January, 1958 and the voters across the region had elected a Federal Government but within three years the government had collapsed and on the 31st of May, 1962 the Federal structure was officially dissolved.

The negotiations for Federal status for the Caribbean was affected by Britain's delay in making decisions on the establishment of the federation between 1947-1958, by which time circumstances both in the Caribbean and Europe had changed. Resistance to federation had been building up in Jamaica and it became an issue of the national political adventurism. The Jamaica Labour Party (JLP) lead by Alexander Bustamante had opposed the federal institution while his cousin Norman W. Manley leader of the Peoples National Party (PNP) was in favour of the institution. At the Montego Bay Conference, in September 1947, Norman Manley argued in favour, while Alexander Bustamante opposed, maintaining that unless federation would lead to national political independence, the JLP and his government would not support it. The other islands were in favour. But, at the time of the conference, the J.L.P. had formed the government of Jamaica, however, by the time the Federation was established the P.N.P had formed the Government and Mr. Norman Manley lead Jamaica into the West Indian Federation. There were deep opposition in Jamaican on the question of its role in the Federation and after a national referendum; Jamaica in 1961 left the federation which precipitated it's collapsed⁷⁴.

British West Indies Sugar Association. The University College of the West Indies, now the University of the West Indies was established in 1947 and has three Campuses in Barbados, Jamaica and Trinidad & Tobago.

⁷³ Report of the Conference of the Closer Association of the British West Indian colonies, Montego Bay, Jamaica 11-19 September 1947 Cmd. 7291, Part 1 & 3. 1948, London.

⁷⁴The demise of Federation came through a suggestion made to N.W. Manley who was at the time premier of Jamaica by the British Secretary of State, Ian McDonald in 1960 that Jamaica was eligible for independence on

As it was in the case of the Organization of Africa Unity (OAU) in its formative years, the West Indian Federation was rife with political self interest among its leaders while national insularity was very pronounced. But, unlike the OAU, it was a political governance institution subject to the vicissitudes and idiosyncrasies of politics. So deep was the insularity factor within the Federation that one of the proponent and political participant Dr. Eric Williams of Trinidad & Tobago observed that the isolationist attitude among the islands was a product of the colonial plantation system which is linked to the mercantile metropolitan trade among rivals which is deeply divisive in practice⁷⁵.

1.6 The establishment of CARIFTA and CARICOM

After the Collapse of the West Indian Federation, the Eastern Caribbean countries had approached Dr. Eric Williams of Trinidad to reconsider his position and hold the federation together, but he decline opting to seek independence as Jamaica had done. But Trinidad & Tobago having had its independence, the Caribbean felt isolated and vulnerable. Dr. Eric Williams tried to get Trinidad & Tobago to play a lead role in the way forward for the region in its international relations after its fractured image. He approached the French to seek a relation with it through its overseas territories of Martinique and Guadeloupe⁷⁶. When that attempt failed he approached Canada, but was quietly rejected on the question of an association between Canada with the region. But by April 1963 Dr. Eric Williams again began to look inwards and expressed his frustration at trying to organize the region⁷⁷.

its own. The suggestion gained momentum which led to the referendum in Jamaica in 1961 and Jamaica's future in the Federation. N.W. Manley asked for a yes vote while Alexander Bustamante his opponent asked for a no vote. The no vote prevailed in the September 1961 referendum and Jamaica left the Federation, Trinidad followed shortly.

⁷⁵ Williams, Eric: *From Columbus to Castro: The History of the Caribbean (1492-1969)* Deutch, London, (1970) p. 116.

⁷⁶ Payne, Anthony. *The Political History of CARICOM*, Ian Randle Publishers, Kingston, (2008) pp. 18-19.

⁷⁷ Ibid. The difficulty of articulating the regional unity was best expressed by Dr. Eric Williams when he argued that the colonial imperial legacies in the region were quite pronounced and was inhibiting. He argued

However while Williams searched for answers, on the 6th July 1965 Barbados and Guyana announced that they would establish a free trade area by January 1966 and that other territories of the region were welcomed to join. The announcement had a monumental impact in the region more so in the other Eastern Caribbean Countries because they were at an advanced stage of discussion with Barbados to enter a federal arrangement. Even Dr. Williams was indeed taken by surprise and the initiative was seen as an effort to snob the Trinidadian Prime Minister, but this was later denied and clarified by Forbes Burnham Premier of Guyana.⁷⁸ However, as the discussions to form the free trade association gathered momentum Trinidad & Tobago became concerned that they would be left out and eventually decided to come on board.⁷⁹ Jamaica stayed out for reason which was not unconnected with the events leading up to the demise of the West Indian Federation. However, Barbados and Guyana firm in making sure that the political rivalry between Trinidad & Tobago and Jamaica did not undermine the initiative to the establishment of the Free Trade Association within the time schedule.

The anxiety of Caribbean leaders became heightened when Britain made another application to join the EEC as the future of preferential trade arrangement for sugar and banana was threatened. This event consolidated the region's resolve to act to protect its vital interests and so the joint initiative of Barbados and Guyana to establish a free trade area took on added importance which bought both Jamaica and Trinidad fully on board

that when you speak to Suriname they say they cannot associate with Puerto Rico because Puerto Rico is an American colony, when the French are approached they do not want to be in association with Puerto Rico because to do so would mean that American State Department and Puerto Rico take the view that they do not want to be in any arrangement with Martinique because to do so would mean to deal with President de Gaulle. See also Dr. Eric Williams' Speech at Woodford Square, Port of Spain, Trinidad, 22 April 1965, *Nation*, Vol. 7 No. 32 30th April 1965.

⁷⁸ Forbes Burnham, *A Destiny to Mould: Select Discourse by the Prime Minister of Guyana*, Africana Publishers, London, (1970) pp. 56-7.

⁷⁹ The announcement to establish CARIFTA was seen at the time as a primary political move by many as being an anti-Trinidad manoeuvre designed to snob Dr. Eric Williams. However, this was refuted by Forbes Burnham who argued that the Agreement to set up CARIFTA was not intended to be exclusive. F. Burnham "Report to the Nation" in Forbes Burnham, *A Destiny to Mould: Select Discourse by the Prime Minister of Guyana* London, (1970) pp. 56-7.

with the Caribbean Free Trade Association (CARIFTA) in 1968. CARIFTA was established on the 1st of August 1968 and all the Associated States with the support of the United Kingdom signed the Treaty. However, the Bahamas and British Honduras (Belize) stayed out. Forbes Burnham, the Premier of Guyana who was one of the pioneers of the CARIFTA movement offered to host the headquarters for the Association was accepted and Georgetown, Guyana became the official headquarters. The regional unity was forged as a result of external threat, but the initiative to unite was propelled by the need for the region to craft its own destiny. The suspicion surrounding Britain's motive for promoting the Federation of the West Indian islands had permeated the region which came to believe that the federal initiative was nothing more than an administrative convenience for Britain which was finding it burdensome to deal with so many small countries as Independence approached. Indeed, Britain had encouraged the establishment of the federation, but later failed to provide the financial and technical support for its success. It is commonly believed that Britain effectively undermined the federal experiment by suggesting to the Premier of Jamaica, Norman Manley, that Jamaica was qualified to gain its independence⁸⁰. Realizing Britain's intention, the region had to find a way forward which could sustain after Britain joined the EC. A situation had developed in the Caribbean similar to the experience of the Africans and the Yaoundé Agreement. Because, Britain had granted Associated statehood to the non independent Members of CARIFTA, so that these countries were in a position to benefit from the EC trade and aid arrangement by virtue of Protocol 22 and this was acceptable by the EC because their impact on the EC internal agricultural arrangement would be negligible as the United Kingdom (UK) imported banana and limited supply of sugar, rum and tropical spices. So, Britain was assured of adequate supplies of sugar, rum and tropical fruits just as France and the Netherlands had through their Caribbean holdings.

⁸⁰ For a detailed discussion on the federation of the West Indies see Payne, Anthony. *The Political History of Caricom* Ian Randle Publishers, Kingston, (2008). pp3-30.

These arrangements were of mutual strategic importance to those European former colonial and imperial rivals which reinforced equality and pride of place among themselves. For purposes of the negotiation, *prima facie*, the U.K had not accepted anything less than what its former rivals, now become partners had retained for themselves. This factor offers some support to the argument, that the arrangements under the Lomé regime was not intended to benefit the ACP States in the main, but instead was so crafted to suit the European interests and the question of fairness on the issues concerning the developing countries was not part of the primary construct of Europe. However the ACP States though not fully satisfied with the outcome had to be content with what they had negotiated give the circumstances of asymmetry between the parties.

In July 1969, Caribbean trade ministers and a delegation went to London to present the region's case to the British government concerning the trading arrangements. They returned with a new conviction that the way forward for the Caribbean in dealing with the issue of trade would have to be collective negotiation as one unit⁸¹. Their experience of Britain's new focus and their own sense of purpose drove that conviction.

But even though, they decided to negotiate as a single unit, the next three years were mired in debates as to the substance of the deal to be negotiated. The debates were highly divisive and intensely contested in the period leading up to negotiations with Europe. The problems were very complex. Firstly, for a region which had just forged a unity given its very recent experiences with the failed federation, secondly, it had no substantive or long history of collective bargaining of trade terms on this scale at the international level and thirdly, there were deep divisions among Member States on the type of relationship the region should have with the EC after Britain became a Member.

⁸¹ By September 1970 when the Conservative government in power in Britain Jamaica Trade Minister, Robert Lightbourne led another mission to London to put its case to the British government, the result of the visit was disappointing. Lightbourne was then a member of the JLP government which was politically allied to the conservative party in Britain.

Britain, in preparation for its final bid to join the EC, created the status of Associated Statehood for some of its Caribbean OCTs namely: Anguilla, Antigua and Barbuda, Dominica, Grenada, St. Lucia, and St. Kitts & Nevis, all of which adopted the status in 1967 while St. Vincent and the Grenadines did so in 1969. Bermuda, the British Virgin Islands, Cayman Islands, Montserrat and the Turks and Caicos Islands remained as British OCTs. A pattern of behaviour of post war European colonial powers that was exposed in the making of the Treaty of Rome by France and the Netherlands in respect to Guadeloupe and Martinique which are French OCTs, and the Netherland Antilles which are Dutch OCTs in the Caribbean was followed by Britain, all designed for long-term strategic purposes. The way was now paved for Britain to renew its application to join the EC at the 1969 Hague Summit meeting of the EC where Britain's application was unanimously accepted for it to become a full Member by January 22nd, 1972. So, while the dissensions and political divide were being exposed in Africa by opposition to the acceptance of the Yaoundé Convention by the AASM in Africa in 1969, a similar debate was bearing down heavily on the Caribbean region on the question of the type of deal that the region should seek when Britain joined the EEC.

Trinidad & Tobago and Guyana were not in favour of the Yaoundé model of associations as they were of the view that it was inimical to the region's sugar and banana export. Jamaica, under a conservative and the pro-western Jamaica Labour Party (JLP) administration had wanted the Yaoundé model because of the financial aid and technical assistance it offered. In its resistance to go with the others, Jamaica had broken ranks with its Caribbean partners and went to Brussels to get support for its case. Jamaica's attitude further complicated matters as it created suspicion among the rest of the Caribbean and added pressure on the fragile infrastructure of the new CARIFTA movement because by then, the EC had agreed to commence negotiations in 1973. Jamaica's problem was its insularity and unilateral tendencies. It had to convince the other Member States to go with the Yaoundé Model, but Jamaica had a further credibility problem not unrelated to its role in the demise of the West Indian Federation,

a problem which was further compounded by suspicions surrounding its visits to European capitals to get support for the Yaoundé model.

But, Jamaica's problems in the region were further exposed when in February 1971, Geoffrey Rippon, the then British Minister responsible for negotiating with the EEC had visited the Caribbean with an agreement from the EEC to protect the economies of those countries which were solely dependent on export of sugar and primary products⁸².

By June, 1971 Robert Lightbourne, Jamaica's Minister of Trade and Industry visited London and in a meeting at Lancaster House, he sought Britain's commitment to support the Caribbean's request to continue export of sugar on favourable terms vis-à-vis all other developing countries and in doing so, was unequivocal about the region displeasure on the issue of the EEC's assurances of protecting the economies of the region⁸³. Sir Kamisese Mara, Prime Minister of Fiji was in attendance at the Lancaster House meeting in London. He observed that what Britain had intended was to ask the sugar producing Commonwealth States to do was to give up the security of the sugar agreement and made a strong case for the sugar suppliers to take Britain at its words that it would protect the sugar market. Fiji decided to "...put its trust in the UK's assurances and go in"⁸⁴.

The region had taken note of the treatment they received regarding their requests at the meeting of the EEC Ministers of Foreign Affairs on the 7th of June 1971. There, the region's declarations on the issues that affected their interest were only noted, but no reference or record was made of them in the deliberations of the meeting. In addition, the Caribbean had an even more fundamental problem caused by the Associated

⁸² Mr. Geoffrey Rippon in the House of Commons, 17 May 1971 (Hansard, Volumes 385-6) cited in *Central Office of Information, Britain and the Developing Countries: The Caribbean*, (London, HMSO, 1973). p. 21.

⁸³ By September 1970 when the new Conservative government came in office in Britain, Jamaica's Trade Minister, Robert Lightbourne led another mission to London to put its case to the British government, the result of the trip was disappointing. Jamaica was therefore forced to look to the Caribbean for compromise.

⁸⁴ Mara, Kamisese: "The Pacific Role in the ACP" *The Courier* No.93 (September to October 1985) p.80. See also Communiqué: The Lancaster House Statement Consultations with Developing Countries .2-3 June 1971.

Statehood granted to the majority of the Member States of CARIFTA. This problem was not only unique in law and practice, but was of historic magnitude as it threatened the very existence of the CARIFTA regional grouping. The Associated States found themselves in an invidious position due mainly to Britain's incoherent policy towards the region based on its own self interest as it move forward to join Europe and refocused its policy towards the Industrial North. It intended to treat the Associated States in a similar manner as the French had treated its OCTs and ASSM under the Yaoundé regime and the Treaty of Rome. The Caribbean did not want that type of arrangement⁸⁵

These small states were indeed self- governing colonies but in their external relations they had no competence in law, as Britain had retained such authority. But their decision to join CARIFTA was supported by Britain. They, having become Associated States prior to Britain joining the EEC were expected to follow the path taken by the ASSM under the Yaoundé regime. A position with which most of them were quite comfortable⁸⁶ but that in and of itself had exposed three major difficulties. Because, unlike the AASM under the Yaoundé Convention, these Caribbean Associated States were then Members of a regional arrangement with other partners which carried legal obligations and required specific procedure to removed themselves from membership if they so desire. The unanimity rule of governance was applicable which meant that decisions had to be made in unison and Britain could not force them to leave, having given them consent to join in the first instance. So therefore, any decision to leave would have to be made by them with the active support of the other Member States, or in the alternative, they could renounce the arrangements, but such an option seemed remote as the political fall out in the region would be beyond what they would have wanted on in light of the history of the failed West Indian Federation of which most of them were members and the trauma of those events was still very fresh in their minds. So, in as much as the Associated States had majority in numbers, and would have

⁸⁵ Interview- PJ Patterson, Kingston, Jamaica, March 3, 2009.

⁸⁶ Ibid

preferred to go along with Britain, Jamaica which was by then a newly independent Member failed to convince the other willing and larger Memberships to go with it and take the Yaoundé Model, though *prima facie* the Yaoundé offer had very appealing financial and technical features.

Trinidad & Tobago however, had a credibility problem not unconnected to the failed West Indian Federation which was further compounded by the subsequent rivalry between itself and Jamaica which had overshadowed the establishment of CARIFTA. So, as in the case of Nigeria's efforts in uniting Africa, it was therefore left to Guyana to hold the Caribbean group together and staved it from being undermined and the divisions being exploited by the EEC leading up to the negotiations. The task to get consensus on the issue was extremely challenging difficulty. So difficult and protracted were the debates at the regional trade ministerial meetings and at the Heads of Government level that one participant, P.J Patterson of Jamaica observed that, so heated were those discussions that to reach consensus was more difficult than to get all of Africa to negotiate with the Caribbean and Pacific as a single unit.⁸⁷

A significant turning point for the region came with the election of the Peoples National Party (PNP) lead by Michael Manley on the 29th February, 1972. Manley by then had proclaimed his commitment to the regional integration movement⁸⁸. But even then, the task of convincing the Associated States of the region to walk away from the arrangements Britain had in place for them was much more difficult to deal with than that which was posed by Jamaica and Trinidad. Tackling of these issues hinged closer to being resolved at the 15th meeting of Council of Ministers of the Caribbean Free Trade Association held in Roseau, Dominica on the 10th - 12th July 1972.

⁸⁷ Interview- PJ Patterson, Kingston, Jamaica, March 3, 2009.

⁸⁸ For an articulation of the Regional Integration Movement see Demas, William: *From CARIFTA to Caribbean Community*, (Georgetown, Guyana 1972).

The meeting⁸⁹ resolved that it was essential for CARIFTA countries to seek a Group relationship with the enlarged EEC base on the need to obtain the best possible terms at minimum cost through joint bargaining and the collective power of the countries of the region. It reaffirmed its recommendation to governments made at the 6th meeting in November 1970 that all the CARIFTA governments should decide to seek as a group, a relationship with the enlarged EEC with special arrangements to safeguard vital exports commodities, without prejudice to the status of respective states consequent on the listing in the Treaty of Brussels of the Associated States. Belize and Montserrat were eligible for association under Part IV of the Treaty of Rome. There was some need to determine the arrangements for the effective representation of the non-independent countries for satisfactory implementation of the decision, especially in a context where so many difficulties and such little success had attend the efforts to negotiate the text of appropriate Part IV arrangements.

The meeting agreed an eight point Plan of action for recommendation to the up coming Heads of Government meeting as follows: that-

1. The Caribbean Free Trade Area (CARIFTA) countries should seek a “group’ relationship with the EEC.
2. A sui generis relationship was required.
3. The focus of attention should be the content of the relationship rather than the exercise of a particular option.
4. The relationship should provide for aid at least to the LDCs.
5. CARIFTA should seek to secure a continuing market on the basis of an agreed Commonwealth quota for the supply of sugar to the enlarged EEC on fair terms in respect of quantities of sugar covered by the Commonwealth Sugar Agreement.

⁸⁹ Communiqué issued at the conclusion of the seventh Heads of Government Conference of Commonwealth Caribbean Countries, 14-19 October, 1972, Chaguaramas, and Trinidad & Tobago.

6. Commonwealth Caribbean countries should engage in intense diplomatic activities in Europe in order to convey the special problems of CARIFITA countries.
7. Invitations should be sent to representatives of the European Commission to visit CARIFITA countries in 1973.
8. Closest cooperation should be developed with the African Associates under Yaoundé II and other Commonwealth Associate.
9. The position of dependent territories should be clarified.

This meeting made a major breakthrough in uniting the region and tempered the tensions and divisiveness that set the tone for the negotiation, but it left the question of the status of the Associated States to be dealt with by the Head of Government Conference. It was also from these deliberations that the decision to send a technical team of seven experts including Alister McIntyre to countries of East and West Africa in September 1972 to lay the foundation for building the technical expertise for the negotiations. This technical team worked closely with the OAU and visited as observer to its deliberations⁹⁰.

The 7th Heads of Government Conference held in July 1972⁹¹, was yet another major milestone in Caribbean diplomacy and integration. There, in the renewed and positive political atmosphere emerging in the region, Michael Manley who felt that his government had an historic mission to restore the image of the Caribbean in international affairs and build unity and cohesiveness, made a significant impact.⁹² That meeting took some very profound decisions as follows: (1) to move from a Free Trade

⁹⁰ Interview- Sir Alister McIntyre, Kingston, Jamaica, November 14, 2008.

⁹¹ Communiqué issued at the conclusion of the seventh Heads of Government Conference of Commonwealth Caribbean Country, 14-19 October, 1972, Chaguaramas, Trinidad & Tobago.

⁹² Michael Manley had found comradeship with Forbes Burnham of Guyana, from his Alma Mater and long time colleague and fellow Federalist Dr. Eric Williams of Trinidad And Tobago and Errol Barrow, Prime Minister of Barbados, whose Democratic Labour Party (DLP) was historically aligned to the Peoples National Party (PNP) lead by Norman W. Manley of Jamaica in the Federal Elections of 1958.

Association and established the Caribbean Community and Common Market (CARICOM) effective May 1st, 1973 and for the community to cooperate in foreign policy and other areas of functional cooperation, (2) resolved the impasse with the Associated States by leaving the matter open but stressed coordinated action in the region at all times and (3) sending a high level technical team from the region to Africa to gather information and to examine how best to relate to the EEC.

Coming up on the heels of those decisions, the mettle of Caribbean unity and foreign policy was severely tested for the very first time in the modern era as a group. The collective act of recognizing Cuba severely tested the strength of Caribbean unity and commitment in preserving it's newly won Independence and to build support throughout the developing world and in the capital of both east and west. This gave some credibility to the region, because even though the United States had frowned upon the region's decision to break Castro's international isolation it accepted the Caribbean's States' sovereign right so to do. That decision had paved the way for Cuba to attend the Non-Aligned Foreign Ministries meeting in Georgetown Guyana in August in 1972, its first appearance outside of the United Nation in any International forum within the Hemisphere.⁹³

The signal was sent that the region was ready to carry the issues of its concern to the international community and take its seat in the spheres of global initiatives. But even before the Treaty of Chaguaramas establishing CARICOM was signed, Britain was applying pressure to keep the Associated States from signing or make it as difficult as possible for them to sign.⁹⁴ The real crux of the problem and confusion was fermented by Britain's seemingly convoluted policy towards the region in general and particularly the Associated States because even though not politically independent Britain

⁹³ Ramphal, Shirdath, Alister McIntyre and William G. Demas, *Caribbean Regionalism: Challenges and Options: Institute of International Relation, (St. Augustine, U.W.I. Trinidad, 1987)* p. 35.

⁹⁴ The Premier of St. Kitts, Robert Bradshaw had walked out of the signing ceremony of the Treaty of Chaguaramas as a protest against British government advice not to sign the Treaty on behalf of Anguilla. The St. Kitts government eventually sign the Treaty on the 26th July 1974.

supported their entry into CARIFTA. They were in a hiatus and a legal conundrum as Britain was prepared to take them into the EC Arrangements under Protocol 22. However, they opted to stay within the agreement under the CARIFTA umbrella. Britain issued warning and threats to them. As a consequence they went along with the independent Caribbean Commonwealth states and rejected their inclusion as British Associated States under Part IV of the Treaty of Rome. Eventually, they all signed the Treaty of Chaguaramas establishing the Caribbean Community and Common market (CARICOM)⁹⁵ as the Caribbean was determined to chart its own course.

1.7 Caribbean States engaging the African and Pacific States

The Caribbean had assessed its position and came to the conclusion that to get the best outcome from the negotiation it was crucial to have the negotiations broad base and inclusive. So, it was very vital get the African States on board and simultaneously to invite the Pacific States to join them. The Caribbean knew that Europe's interest rests in Africa and therefore without having the Africans on board the Caribbean would have an uphill task with the Europeans.⁹⁶

Arising from the decision of the 7th Heads of Government Conference of 1972⁹⁷ the region took certain concrete steps. Firstly, it made contact with those Commonwealth African States with which it had a relationship through Commonwealth Prime Ministers Conferences and secondly, it dispatched emissaries to the European Capitals⁹⁸ to sensitize them as to the important issues of the Caribbean States and thirdly, made contact with other bodies such as the Group of 77 Developing Countries and the Non-Aligned Movement in which it had good relations.

⁹⁵ Demas, W. G. *West Indian Nationhood and Caribbean Integration*, (CCC. Publishing House, Bridgetown, Barbados, 1974) p. 33.

⁹⁶ Interview- P.J. Patterson, Kingston, Jamaica, March 3, 2009.

⁹⁷ Communiqué issued at the conclusion of the seventh Heads of Government Conference of Commonwealth Caribbean Countries, 14-19 October, 1972, Chaguaramas, Trinidad & Tobago.

⁹⁸ Interview- PJ Patterson, Kingston, Jamaica, March 3, 2009.

Caribbean diplomacy in the Non-Aligned movement took a positive turn when the group agreed to hold its Foreign Ministers Ministerial in Georgetown, Guyana in August, 1972. There in a room at the official Presidential Residence, Shirdath Ramphal, the Foreign Minister of Guyana, chaired an informal discussions with a select number of the African delegation from Kenya, Nigeria, Tanzania, Uganda and Zambia. In attendance also were representatives of Jamaica and Trinidad and Tobago. Having already briefed his Caribbean colleagues before the meeting about his intentions and secured their commitment he engaged the African delegations to press the EEC to open the negotiations to accommodate their mutual interests beyond the limits of the Yaoundé Group. They agreed to the suggestions made by Ramphal who later observed and explained what he was seeking to achieve, that his real intention was to use the opportunity of the Non-Aligned Foreign Ministers meeting to explore and talk with his Commonwealth colleagues about the EEC to see how the Caribbean could be involved with the process.⁹⁹ Ramphal's initiative paid off immensely for the Caribbean. Indeed it has been the real bridge between the two groups since the value of which cannot be quantified. This represented the first major break-through that the Caribbean so badly needed, because without the African States on board there would not be much in it for the Caribbean region to gain from the negotiations. The way was now paved for the technical team from the region to visit Africa and commenced the technical preparatory work for effective negotiations with the EEC. The region knew that Europe's real interest was in Africa, not the Caribbean and that was why it was so important for the Caribbean States to join with the African States¹⁰⁰ in the negotiations.

Alister McIntyre who was selected to lead the Caribbean team of expert had contacted his cousin, Arnold Smith, a Canadian, who was the Commonwealth Secretary-General to seek assistance for the mission to Africa. That initial contact paved the way for the

⁹⁹ Ramphal, Shirdath. 'The ACP – the early years' The Courier no. 93 September – October 1985, p. 81. See also Shirdath, Ramphal, 'The ACP-EEC Negotiations: A lesson in Third World Unity'. Ministry of Foreign Affairs, Georgetown, Guyana, (June 1975) p.5.

¹⁰⁰ Interview- P.J. Patterson, March 3, 2009, Kingston, Sir Alister Mc Intyre Nov.14, 2008, Kingston & Sir Shirdath Ramphal Bridgetown, Barbados, June. 2009.

limited but valuable role the Commonwealth Secretariat played in the formative years of the ACP relations with Europe.¹⁰¹ The team visited states in East and West Africa in September, 1972 and had extensive consultations covering issues of common interests including but not limited to, commodity arrangements, reverse preferences, development aid, quantitative restrictions, and rules of origin, rights of establishment and generally how to approach the Europeans in the pending negotiations.

By March 1973, the Commonwealth African States sent a delegation of experts to the Caribbean and the relationship grew stronger as the both sides continued to meet. The Caribbean through their observer Status which the OAU had granted attended all meeting of the OAU and continued to build the relations which laid the basis for the eight point negotiating position which was adopted by the OAU with respect to the EEC, the original draft of which was prepared by Alister McIntyre. The initiatives at the political level however had to continue in order to preserve the unity which was in place both in Africa and the Caribbean, But while the region had gotten the Anglophone African States on board, there still remained the task of convincing the Francophone African States and a way had to be found at the political level to achieve this objective.

The way forward was through the Non-aligned Movement¹⁰², by then the Caribbean had built a very good network among the African States in the United Nations Conference on Trade and Development (UNCTAD) and had used their influence to break the deadlock between Francophone and Anglophone Africa and got them to come on board in negotiating as one group for Lomé negotiations.

The Caribbean through Forbes Burnham of Guyana and later through Michael Manley in the Non-Aligned Movement had established a very strong relationship with Algeria and the region had placed the burden on Algeria to use its influence to help to carry the

¹⁰¹ Interview- Alister McIntire McIntyre, November 14 2008. See also Akosa, Mabel Op.Cit. pp. 35-38.

¹⁰² Interview – Sir Shirdath Ramphal, Bridgetown, Barbados, June 8, 2009.

issue to the Francophone African States, an effort which finally got them on board¹⁰³. Algeria had wanted to host the next Non-Aligned meeting of Heads of State which was to be decided at that meeting of the Foreign Ministers in Guyana in August 1972, there Ramphal brokered a deal with the Algerian Foreign Minister Abdulaziz Bouteflika who were in competition with Mrs Sirimavo Bandaranaike, Prime Minister of Sri Lanka another Member State of the Movement to host the next Heads of Government conference of the Movement by guaranteeing the Algerians whom had great influence with the Francophone African States, that they would be allowed to host the conference, if they under took to convince the Francophone African States to join with the Anglophone African States to negotiate with Europe as one unit. The Algerian Foreign Minister took the offer and effectively got the Francophone Africans on board through the offices of the OAU¹⁰⁴.

That initiative, more than any other intervention was the decision that the Caribbean had wanted because without the Francophone Africans the Caribbean could not achieve its objectives¹⁰⁵.

The African States issued their Declaration for the negotiations at the tenth ordinary session of the Assembly of the Heads of State and Government in Addis Ababa. The eight point Declaration was expressed in ideological terms and stated Africa's position for the negotiations with the EEC in terms: (1) the principles of non-reciprocity in trade and tariff concessions given by the EEC;

(2) The extension of a non-discriminatory basis towards third countries of provisions of rights of establishment;

¹⁰³ Interview- Sir Alister McIntyre, November 14, 2008. For a full discussion and analysis of the Caribbean diplomacy in UNCTAD see also Williams, Marc Andrew: *The Group of 77 in UNCTAD: Anatomy of a Third World Coalition*. PhD thesis. London School of Economics and Political Science, University of London (1991), p. 19.

¹⁰⁴ Interview- Shirdath Ramphal, June 8, 2009, Barbados.

¹⁰⁵ Interview- Sir Shirdath Ramphal, Bridgetown Barbados, June 8, 2009.

(3) The revisions of the rules of origin must be formulated so as to facilitate the industrial integration of African countries and in particular, they must grant the status of original products to all goods which had been produced in one or several of the African States, or which have been processed in accordance with mutually accepted criteria irrespective of whether or not they enjoy preferential relations with the EEC;

(4) A revision of the provision on the movement of payments and capital to take account of the objective of monetary independence in African countries, and the need for monetary cooperation among African countries;

(5) The dissolution of EEC financial and technical aid from any particular form of relationship with the EEC;

(6) Free and assured access to EEC markets for all African products including processed and semi-processed agricultural products, whether or not they are subject to the common agricultural policy of the EEC;

(7) The guaranteeing to African countries of stable, equitable and remunerative prices in EEC markets for their main products, in order to allow them to increase their export earnings; and

(8) Any form of agreement made with the EEC should not in any manner adversely affect intra-African cooperation.

The initiatives at the political level however had to continue in order to preserve the unity which was in place both in Africa and the Caribbean. But, while the Caribbean had gotten the Anglophone African States on board, there still remained the task of convincing the Francophone Africans and a way had to be found at the political level.

The Ramphal's initiative later proved very vital in securing corporation and unity. But the group had to be kept together was in and of itself was a monumental task. The several meeting of the OAU trade ministers held in Dares-Salaam, Lagos served to achieve and consolidate the newly found unity in Africa on the one hand and among the entire ACP

State on the other hand. Indeed the Dares-Salaam meeting which was held in July 1973 was addressed by President of Tanzania, Julius K. Nyerere who emphasised the need for unity, and a position which was underscored by Shirdath Ramphal of the Caribbean who also addressed that meeting. The Lagos meeting which followed proved very decisive for African unity and solidarity going into the negotiations which were scheduled to commence on the 25th of July.

So, by the time the OAU issued its eight points Declaration at its tenth Summit, the way forward was clear as Africa and the Caribbean were singing from the same page. The task which firstly was never even conceived on the occasion of Europe's Declaration of Intent in 1963, but which appeared almost insurmountable when conceived at the sixth meeting of the Heads of CARIFTA in 1970 had become reality. The African States were now on board with the Caribbean to negotiate a new trade and cooperation agreement with Europe. But, the consensus was still not as solidified as the region would have liked, more work needed to be done. At this stage, Pacific States had to come on board and the Caribbean had taken a decision to invite them to join¹⁰⁶. The region made contact with the Leadership of Fiji and Mauritius, Prime Ministers Ratu Sir Kamises Mara of Fiji and Sir Seewoosagur Ramgoolan of Mauritius accepted the Invitations respectively and agreed to attend a meeting of the Commonwealth Sugar exporters at Lancaster House in London to discuss the approach to be taken regarding sugar¹⁰⁷.

The French had no colonial holdings in the Pacific which were of economic strategic importance to France. In 1975 French holdings in the Pacific were cantered around a few islands. These islands did not play a significant role in terms of global trade but for the British the Pacific islands were suppliers of sugar. So, when Britain joined the EEC the Pacific Associable were only three independent states¹⁰⁸ which were Members of

¹⁰⁶ Interview- PJ Patterson, March3, 2009.

¹⁰⁷ See the United Kingdom AIDE MEMOIRE 1 Protocol 22 Negotiations 7, June 1974. Lancaster House Statement consultations with Developing Members Countries of the Commonwealth Sugar Agreement 2-3 June 1971.

¹⁰⁸ Fiji, Western Samoa and Tonga.

the South Pacific community. But, while the community included Australia and New Zealand these two states were not qualified as Associable. The Associable had agreed to present a common front for the purposes of the negotiation and the Secretariat of the Southern Pacific Economic Commission (SPEC) assisted them in preparing for and co-ordinating their activities for the negotiations.

On the occasion of the eighth Heads of Government meeting of CARICOM in Guyana in April 1973, three months before the 1st meeting in Brussels, the Heads reaffirmed their support for the new development in Africa which opened the possibility of negotiating a new agreement all together, not merely an enlarged Yaoundé II. The meeting appointed Shirdath Ramphal as Chief Spokesman for the region, because by then he had secured the African commitment at the Non-Align Foreign Ministers meeting in Guyana.

1.8 The final preparations for negotiating with the EEC

The Caribbean was determined to make a lasting impact on the historical architecture of North–South relations during the course of this negotiation with the EEC ¹⁰⁹quite aware of the monumental task and complexities of the issues coupled with the extent to which powerful countries of the North in their Global trade arrangements had sought to define and determine the degree of liberty and the quality of the options it give to small countries.¹¹⁰

Having adopted a comprehensive negotiating position at its seventh Heads of Government Conference meeting, and having appointed its chief spokesperson to lead the negotiations, the Caribbean took some concrete steps in preparation for the opening of the negotiations.

¹⁰⁹ Interview- Sir Shirdath Ramphal Bridgetown, Barbados, June 8, 2009.

¹¹⁰ Demas, William: *Consolidating our Independence: The major challenge for the West Indies in Caribbean Regionalism Challenges and Options: Institute of International Relations*. U.W.I St. Augustine, (1987) Pamphlet p. 50.

- (1) They agreed upon a broad agenda for the three groups, and seven negotiating groups were established.
- (2) A high level technical team was sent to a meeting in Lagos Nigeria between 7- 9 July to make final preparation before talks were opened on the 25 - 26 July, 1973
- (3) A meeting of the Commonwealth Sugar Exporters was arranged at Lancaster House at which time the group concurred that Jamaica's Minister of Trade and Industry, P. J. Patterson would lead the negotiation for sugar.

The African and Caribbean groups continued to meet up until negotiations commenced. At the last meeting of the groups in Lagos Nigeria before negotiation started, P.J. Patterson, Jamaica's Minister of Trade and Industry in response to the presentation by the President of Nigeria, General Gowon had established a very positive tone for the pending negotiations. His reference to his African ancestry became a rallying point for the other members of the Caribbean delegation. The opening of the negotiations with the EEC was their next encounter. The negotiations were scheduled to last eighteen months to coincide with the expiration of the Yaoundé and Arusha Agreements both of which were to expire on the 31st January, 1975.

1.9 Negotiating the first Lomé Convention

When the Caribbean States came to the negotiating table along with the African and Pacific State one the one side, they were united, not only were they well prepared, they had built up a pool of experience in international relations and had earned some degree of respectability as a unit and was supported by a very well qualified technical team. At the start of the negotiations there were six factors which the region was going to rely on for their strength, (1) Britain had made it conditional for entry to the EEC that the Commonwealth Sugar Agreement which it had with the Commonwealth sugar producers be respected and would have wanted for sugar to be treated separate; (2) Britain's interests in sugar spanned the three regions and its investments in the sugar industry across these regions was vast, also all its refineries depended on the product

for survival and Britain was itself a major consumer of refined sugar; (3) Britain had investments mainly in energy resources in Nigeria while its market for British exports was vital; (4) Britain was supporting most of the positions taken by the region because of the multiplicity of its own self interest¹¹¹; (5) Europe was vulnerable because they were divided and that division was because they were unsure. They were unsure because never in its history had Europe had to confront a group of such proportion, so united and purposeful and (6) Europe therefore was on the defensive.

The EEC's Memorandum published in April 1973,¹¹² explained the need for "partnership" and shied away from the previous usage "association". It also reflected a change from the earlier position of limiting the selection of options under the protocols of Part IV of the Treaty of Rome as preconditions. It made a proposal for a stabilization scheme for the fluctuation of commodity prices and also addressed aid for developments projects even more so for the least developed countries, but pressed the question of reciprocity.

The Caribbean's short-term interest was to protect its exports, develop its industries and deepen its regional integration. However, its long-term objectives were to effect a lasting change in the construct of the global political economy in terms of the existing North-South relations and so the negotiations with Europe were one aspect of those objectives¹¹³. What was enshrined in the Lomé regime was therefore not an end in and of itself but a part of a wider initiative underpinned by the basic tenets of the call for a New International Order (NIEO). In the international outlook of the Caribbean, Lomé was just a step in a longer journey¹¹⁴.

¹¹¹ Interview- P. J. Patterson March 3, 2009.

¹¹² The Deniau MEMORANDUM 4th April, 1973, also defined the type of cooperation which Europe wanted.

¹¹³ Ibid.

¹¹⁴ Interview- Sir Shirdath Ramphal, Bridgetown, Barbados June 8, 2009.

For Africa, their short-term interest was to develop their industries and shape their own destiny without interference while the long-term objective was African Unity. However, for the Pacific, their short-term interest rested in stabilization of prices for their main export and building a lasting relationship with Africa and the Caribbean.

When the Preliminary Round opened on July 25th 1973 at the Egmont Palace in Brussels in attendance were forty six ACP States to include; thirty four African countries, to included nineteen Associable, twelve Commonwealth Associable, in addition to Ethiopia, Liberia, and Sudan, all Members of the OAU. From the Caribbean, there was the Bahamas, Barbados, Guyana, Jamaica, and the twin island state of Trinidad and Tobago and from the Pacific were Fiji, Tonga and Western Samoa. In the capacity of observers were the North African States of Algeria, Egypt, Morocco and Tunisia. The deputy Secretary-General of the OAU represented that organization.

The Caribbean Spokesman was confident of the technical and political support he had both in the region and the wider ACP, the OAU by then had elected Wenike Briggs, the Nigerian Commissioner for Trade to be lead Spokesperson for Africa, Nigeria, being one of the most populous and influential State in the Continent and had been a keen actor in leading and maintaining African unity. Europe also had a preoccupation with African mineral resources including energy, Nigeria was of particular interest to the British. The Caribbean team was lead by Shirdath Ramphal, Guyana's Foreign Minister while the Pacific was lead by Prime Minister Ratu Sir Kamisese Mara of Fiji. The nine Member States of the EEC namely; Belgium, Denmark, France, Germany (Federal Republic) Ireland, Italy, Luxembourg, Netherlands and the United Kingdom were present.

Three opening statements were prepared for delivery by the ACP which had required considerable coordination and collaboration to ensure consistency. Firstly, within each region and secondly, among the three separate groups covering all participating Member State. To have completed those processes and to have gotten the groups to agree to the Caribbean's proposal that only one presentation should come from each

region was extremely difficult, indeed “to achieve that consensus was a feat in itself”¹¹⁵. The policy positions of the ACP were enunciated in these three opening statements.

The four opening statements were very important in different respects, all of which exposed the space needed and the intention of the parties which set the tone of the negotiations. The Ivar Norgaard, the Danish Minister of Economic Affairs and President of the EEC Council of Ministers spoke first. He emphasized the importance of the various choices that countries could take under Protocol 22. On the question of trade he specifically offered free entry into the EEC for most of the commodities requested.

Winike Briggs, the Nigerian Trade Commissioner who spoke for African went next¹¹⁶, and he stressed the importance of the event which allowed Africans for the first time to speak with Europe with a singular voice. He spoke about the need for an agreement to reflect conditions in the global economy with financial and technical support. On the question of trade, he spoke of the need to reach an agreement in the context of justification for preferential treatment for Africa in particular and developing countries in general.

The next statement came from Shirdath Ramphal¹¹⁷, the Guyanese Foreign Minister who articulated the Caribbean’s position. He spoke to the historical importance of the linkages between the Caribbean and Europe which had shaped the destiny of its people but emphasized the regions commitment to the integration process and the need to negotiate as a group. He used the occasion to point out the differences in political status of the Associated State, and argued their freedom to choose to remain under Part IV of the Treaty of Rome. While expressing disappointment at the vagueness of the EEC’s position, he gave his own interpretation to the options that the EEC was not bound by past approaches and should be willing to formulate new models better suited for the

¹¹⁵ Interview- P. J. Patterson, March 3, 2009.

¹¹⁶ Interview- Sir Shirdath Ramphal Bridgetown Barbados, June 8, 2009.

¹¹⁷ Ibid.

future and argued for trade and economic development that would be just. In doing so, he rejected reciprocity and pressed for sugar and bananas to be given special considerations as the main export earners for many countries in the Caribbean and that CAP should not be an instrument of impediment for Caribbean agricultural products.

He argued that while aid was important it should not be used to establish relations which are neither just, enlightened nor effective or in furtherance of substitute for fair remuneration for commodity prices. Further, that the region wanted to be part of the decision making process for European Development Fund (EDF) spending and finally, he called upon Europe to make its 1972 summit Declaration a practical experience.

Ramphal had used the occasion also to articulate the case of the Associated States in the regions and the dilemma facing the region because; at the beginning of negotiation the Commonwealth Caribbean as a group was beset by a political difficulty. The fact that some States were independent and therefore were competent to negotiate in their own right and others were merely Associated States and dependencies. In respect of the latter group both the Commission and Britain maintained that they could not be present during the negotiations and further pointed out that they had no real need to be. Indeed, the seating arrangement at the conference had excluded the Caribbean Associated States, but the region insisted that the arrangements be changed and Europe agreed

The position was taken that since they were already guaranteed association under Part IV, the Associated states were far from happy but could not make any further headway on the matter. Moreover they operated under a thinly disguised British threat that if the associated states should decide to reject Part IV they should bear in mind that what was not negotiable was a different arrangement for them alone¹¹⁸. The Associated States of the Caribbean were obligated to rest upon the “goodwill” of the independent Members of the region and in the spirit of cooperation and the good offices of Guyana and the more

¹¹⁸ Interview- Sir Shirdath, Bridgetown Barbados, June 8, 2009.

direct intervention of William Demas, the CARICOM Secretary-General the representative from the Eastern Caribbean Community sat with the official Caribbean delegation of the region throughout the negotiation to safeguard their interest. After Ramphal spoke, Britain did not pursue the matter of their status any further.

The Caribbean had gone to the negotiations determined to underscore the point and signalled their intention to Britain on the question of their position of the Associated States in the region and how the United Kingdom was addressing the concerns of the region with respect to the dilemma and the invidious nature of the Associated States . The region had to express its recognition of the crucial difference between formal and effective sovereignty by arguing that the former is more symbolic than substantive, for its main focus centres on acquiring such ceremonial badges of independence as diplomatic recognition by other states, admission to the United Nation and other similar manifestation of acceptance into the international community.

In contrast however, the latter refers to circumstances where a country and its people truly control their own destinies. They are in other words exercising their right of national self determination in the fullest sense of the term. Establishing and especially sustaining these conditions was not a simple matter. Therefore, constant vigilance must be maintained against any attempt by outside elements to usurp a nation's power to make and implement its own decisions concerning its political, economic and social affairs¹¹⁹. The Associated States presence at the negotiating table through the representative of the CARICOM secretariat and Ramphal's intervention seemed to have made the points because throughout the negotiations the matter of their presence and status was never revisited. Since then only the island of Montserrat has not gained independence from Britain and all the territories are now full Members of CARICOM.

Ramphal's presentation had clearly articulated to Africa, Europe and the Pacific what had become the hallmark of Caribbean international perspective. The region had built

¹¹⁹ Demas, William. Op.Cit.

up an international reputation as “bridge builders” between North and South and within the South between Africa, Asia, and Latin America¹²⁰. The region believes that its international mission is to strive for consensus and so, even where wide disagreements exist, the parties must keep the lines of communication open as talking represents a continuous dialogue and engagement in order to resolve difficulties.

Prime Minister of Fiji, Ratu Sir Kamisese Mara was the last to speak. He too, spoke of the historical linkages between his regions made Europe and the need for Europe to begin to repair the damages of colonial spoilage and emphasized the importance of the unity and need for continued relations with African and the Caribbean. He premised his denunciation of reciprocity on the asymmetry between the two negotiating parties and also called for sugar to be treated especially as it was the main export earner for the Pacific States. He wanted all the products from the Pacific to be included in the stabilization scheme. In the area of aid and cooperation he argued for the inclusion of the other non independent Pacific countries.

The positions of the Caribbean and Pacific States were very clearly articulated. However, there were problems within the African grouping particularly on the question of reciprocity, the Francophone Africans wanted it while the Anglophone rejected. Signs of dissention were emerging which had to be checked¹²¹. The ACP seemed to have read “through the line” of the EEC statement which confirmed their uncertainties, so much so that at the close of the session, the EEC chief negotiator thought he had secured some agreement on the guiding principles going into the next rounds and requested that it be set out. Ramphal responded that only exploratory talks were completed and that there was no agreement¹²².

¹²⁰ McIntyre, Alister: *The Caribbean after Grenada: For challenges facing the Regional Movement*. – *Caribbean Regionalism Challenges and Options*. Pamphlet Institute of International Relations U.W.I St. Augustine. p. 8.

¹²¹ For details of the difficulties see. Akosa, Mabel Op. Cit pp. 72-76.

¹²² Interview- Sir Shirdath Ramphal, June 6, 2009. Barbados.

But, so it was also, that the obvious disquiet in the Africa group was identified by the European and the French were particularly pleased that the Francophone Africans were holding out on the vital question of reciprocity. The EEC strategy started to coalesce around this weakness in the coalition and therefore was further confounded, because in as much as the Europeans were well aware of the importance of African unity or its disintegration in terms of the outcome, so too were the ACP States. If Africa disintegrated, the entire negotiation would have collapsed and this possibility would seem to operate in the interest of Europe. For the ACP States however, it would be a colossal disaster, the possibility of which they had to guard against.

1.10 Formulating the institutional framework of the ACP States

After the initial meeting in Brussels in July, 1973, the group came together at a Trade Ministerial meeting of the OAU in Dar-es-Salaam in October to which the Caribbean and Pacific countries were invited. However, while the Pacific delegation was unable to attend they gave a mandate to the Caribbean to represent them. But, although the Caribbean was present in the capacity of observers their input was most valuable in holding the group together. The meeting was addressed by President of Tanzania, Julius Nyerere who not only emphasized the need for unity of the group but also the need to coordinate in light of the GATT negotiations scheduled for September in Tokyo and warned against the perils of internal divisions. Nyerere made an impassioned plea for Africa no longer to be mere suppliers of raw material and that the negotiations should free Africa from the strangle hold of Europe¹²³.

Shirdath Ramphal spoke on behalf of the Caribbean and the Pacific and in his call for unity, stressed the importance of the remarks of President Nyerere and the bonds between Africa and the Caribbean and the Asians who were transported to the Caribbean through the Colonial experience.

¹²³Akosa, Mabel, Ogechukwu PhD Thesis. Op.Cit. p. 79.

There, the dissenting voices on the issue of reciprocity were put to rest as the risk of political ostracism was too profound. The first sign of genuine pooling between the Francophone and Anglophone Africans had emerged.¹²⁴ The Dar-es-salaam meeting consolidated the very essence of African unity and set it on a path strong enough to take their case to Europe in an unshakeable manner. In the eye of the African leaders, the issue had become international in character to include the Group of 77 developing countries within the United Nations Conference on Trade and Development. Ramphal's plea for unity has tied the African and Pacific States to the international solidarity needed to take the case to the Europeans and the message was well received. By the end of the meeting the message had gone out that Africa had united with the Caribbean, and an important signal was sent as Africa's diplomacy was taking shape.

1.11 Establishing the Institutional framework for the ACP States

With this unity solidly concretised, the ACP group began to put the institutional framework in place to facilitate the negotiations. By then the AASM had already had their Ambassadors in Brussels and all the Ambassadors from the ACP had started to prepare for the negotiations and began speaking with the Commission in unison and were reporting to their respective Trade Ministers. While the African States were reporting to the OAU, a similar reporting was occurring in the Caribbean. The negotiations were been conducted by the Ambassadors who took instructions. A Council of Ministers was established to give political guidance and the chairmanship rotated quarterly; the membership was drawn from all regions in Africa, the Caribbean and the Pacific.

Within the Committee of Ambassadors a bureau was created with a chair and three vice chairs based on regions of the ACP. While the Committee of Ambassadors did the preparatory work for the Council of Ministers, the Bureau served as support body for experts involved in the negotiation and setting of schedules and meetings.

¹²⁴ Ibid.

1.12 The commencement of negotiations

Formal negotiations were opened in Brussels on the 17th of October, 1973. The President of the EEC Council of Ministers, Ivar Norgaard opened there he sought to bring the parties closer together in a conciliatory tone and pledged the EEC's commitment to make a significant contribution to ACP relations. The issue of the model to be applied under Protocol 22 of Part IV was left wide open for negotiation. The question of reciprocity was still not settled. But Europe; made it clear that duty free access to agricultural products was agreed. Stabilizations mechanism for prices on agricultural produce was been considered but no clear and definitive position was arrived at. On the issue of financial support, Europe had agreed to greater participation by ACP States and proposal for a joint approach to projects and committed itself to promote regional integration in the ACP.

When the ACP responded, the Minister of Trade of Zaire, Mr. Namwizi voiced his concern about the EEC continued vagueness on the question of reciprocity and stabilization proposals and called for the duty free entry of agricultural products affected by CAP. It became clear that the EEC was trying to retract from its July 26th position which prompted a formal request for the statement to be treated together as one for the purposes of these negotiations. He called for a special regime for sugar and drew on the instructions of the Dar-es-salaam meeting for a response to the international crisis of the North and the South.

Before the meeting started the Caribbean through Ramphal had initiated another masterful diplomatic "stroke" by offering to step aside so that only one person would speak for the entire group and that the chairman had that responsibility. Indeed, the response of the chairman on that occasion had benefitted substantially from the authorship and input of the Caribbean¹²⁵. His speech was already prepared by the Caribbean leadership for presentation, but on account of Ramphal's diplomatic initiative,

¹²⁵ Interview- P. J. Patterson, March 3, 2009. Kingston, Jamaica.

it was offered to the group and was presented on behalf of the entire group with minor adjustments. That initiative represented an expression of the Caribbean's determination to foster unity and build cohesion in the relations for the long-term relation. At the end of the presentations, Europe by then had come to realize that between Africa and the Caribbean the possibility of continuing with either of the existing models was non negotiable because (1) taking the Yaoundé route to success could not be followed as the Caribbean was firmly against it; (2) so too was the Arusha Model, it could not be resurrected as the Africans were resolute about reciprocity and the unity being so firmly displayed firstly among the African States has radically shifted and the Caribbean was fully locked in with them. A new Model had to emerge.

At the end of the first round certain realities surfaced and the ACP had begun to feel confident. What had emerged bore the fundamental deficiencies in Europe's policy positions in terms: (1) Europe has drifted into further disunity as the integrity of Common Agricultural Policy (CAP) was been exposed as the main source of the problem because France had opposed the principle of Non- reciprocity, Italy's agriculture was about to face competition from African produce and Germany was vehemently against the stabilization scheme being proposed. Sugar posed a particular threat and the beet lobby was very formidable¹²⁶. Europe was therefore not united, uncertain and vulnerable.

Europe was not well prepared, but could not walk away from the ACP States so, it had to find answers. The ACP had sensed victory and was not prepared to relent, the stage was therefore set for a process so lengthy and possibly antagonistic, far beyond Europe's own anticipation and yet the results they wanted could not be assured. It is further argued that, the European thinking and conduct may have informed their possible misreading that the ACP States had a wider and more profound agenda because in the minds of the ACP States, the real focus of the negotiation had changed since the preliminary opening in July. Further, the political and cultural reliance of the

¹²⁶ Interview- Alister McIntyre, Nov.14, 2008. P. J Patterson, March 3, 2009, & Sir Shirdath Ramphal. June 8, 2009.

French on having their way with or through the Francophone African States had taken a departure which may not have been communicated clearly, if at all.

By then, the negotiations were linked to the discussions in the United Nations Conference on Trade and Development (UNCTAD) and had become enjoined with the call of the G77 for a New International Economic Order (NIEO).¹²⁷ The new direction of the negotiation was designed to find a solution for the difficulties being played out in UNCTAD in light of the launch of the Tokyo Round of GATT as the ACP recognized the need to move the process of negotiation along, vigorously, rigorously and speedily.

Europe however, should have been aware of these intrinsic designs of the negotiations because from very early the Caribbean had taken steps to sensitize them on the issues when it had dispatched emissaries to the various European capitals. Europe seemed not to have afforded much regards for those initiatives and in hindsight its oversight or indifference came back to haunt Europe during the negotiations

1.13 The negotiation processes

The Negotiating Process had commenced in earnest in October 1973¹²⁸ and the first round took place between November 1973 – February 1974 and the second round from May 1974 – January 1975.

During phase one, there were difficulties at the technical and ambassadorial levels as the ACP negotiators became frustrated as the EEC negotiators had no answers to what were some of the ACP's request. For example, on their question of reciprocity and export stabilization which was very vital to the ACP's mandate.

The EEC sought to get around the ACP by offering to approach the issue on a product by product basis in dealing with agricultural products coming into Europe from ACP. The ACP flatly rejected that offer. The ACP States were not prepared to take Europe

¹²⁷ Interview- Alister McIntyre Nov, 14, 2008.

¹²⁸ Interview- Sir Shirdath, June 8, 2009.

seriously because of past experiences. The financial package was another area of difficulty, but Europe was prepared to resolve that issue in their own way. For the Caribbean, aid was important but not the main determining factor as the region's long-term objective was to effect changes in the global economic and trade architecture.¹²⁹

The negotiations were being conducted at the technical level by the Committee of Ambassadors of the ACP States and the EC negotiators and at the Political level between the Community and the ACP Political directorate through their Ministerial.

1.14 The British threat to renegotiate their Accession to the Treaty of Rome?

Between November 1973 and February 1974, the negotiations made very slow progress because the negotiators were deadlock on the questions of aid and the stabilization proposal, but the deadlines for expiration Yaoundé and Arusha were approaching and the negotiations were running behind schedule. The ACP negotiators felt that Europe was stalling for time, hoping that expiration of time would force the hands of the negotiators. Europe was well aware of the importance of their financial aid to some countries in the African group and felt that if the existing agreements expired without replacement that could put pressure to force a decision favourable to the EEC. But, the ACP negotiators had decided to ignore the time constraint; and called for a ministerial to address those matters. However, the real problem for Europe was due to the fact that they were divided on the issue of the agricultural imports from ACP in light of its agricultural policies.

Britain, by then had elected a new government led by Mr. James Callaghan of the British Labour Party who had threatened to pull out of the EEC if the accession arrangements were not renegotiated. Britain's proposal for renewal rested heavily on the issue of the Commonwealth Sugar Agreement and aid for the developing countries to include Bangladesh, India, Malaysia, Pakistan, Singapore and Sri Lanka. Britain's

¹²⁹ Interview- Alister McIntyre, Nov.14, 2008. Kingston Jamaica

proposal forced a response which exposed the reasons why the EEC in the first place had excluded the Commonwealth Asian States, these reasons support the thesis that European was about protecting its interests. France opposed Asian inclusion arguing the size of the aid budget would be obliterated; The German's were concerned about additional financial burden on their budget while Italy argued relative poverty in its own territory to the conditions in those Asian countries. Britain, after causing grave alarm in the EEC, eventually withdrew its conditions and proposals. But the initiative had not escaped the attention of the ACP States which they exploited because it opened up the depth of the divisions within the EEC.

At the time of these negotiations with the African, Caribbean and Pacific states, Spain and Portugal were potentially suppliers of Mediterranean and semi tropical fruits including citrus but were not yet Members of the EC¹³⁰. Europe by then had fairly cheap supplies of tropical products and there was no threat from the North American suppliers so, it was in Europe's interest that the ACP-EC trade relations remain intact but must be monitored with safeguards. There were other concerns however which it was felt best left to be addressed over time as the relationship developed. For example, Europe wanted a longer-term Agreement to foster stability in supplies of raw material but the ACP opted for a five-year agreement, to which Europe conceded.¹³¹

1.15 Building cohesion and support for Lomé through the Group of 77

When Britain applied for accession to the EEC in 1969, discussion were already very advanced in UNCTAD on preferential trade arrangement as the African and Caribbean countries had formulated their positions on preferential trade arrangements within their own group in UNCTAD.

¹³⁰ Both Portugal and Spain acceded to the Treaty on the 12th June 1985.

¹³¹ Interview- P.J. Patterson March 3, 2009. Kingston, Jamaica.

The Caribbean had also developed a strategy of negotiating with political leaders of the national level within the EEC while negotiating with the Commission not only did they penetrated the political elites but where necessary reached other Commissions within the EEC so as to impact the outcome of the various aspects of the Lomé negotiations.¹³²

The Africans States had been urging the acceptance by the developed countries of the principle that developing countries should be accorded preferential treatment particularly in the protection of infant industries based on the recognition that even with complete liberalization of trade the developing countries would not be in a position to compete on even terms with the industrialized countries.

While the Lomé negotiations slowed because the EEC sought answers and responses, the ACP States were very active at another level in other arenas, organising themselves for the wider agenda to effect changes at the global level. The ACP convinced the Europeans to agree to a joint Ministerial in Kingston, Jamaica set for July 25th, 1974. The Caribbean had become a central point of focus as this was the very first time in over three hundred years that a meeting of Europe was been held outside of Europe and more so, upon Caribbean soil.

The work of leading Caribbean Political figures namely; Forbes Burnham and Michael Manley in the G77 and Non-Aligned Movement had began to attract international attention, the Peoples National Party (PNP) of which Mr. Manley was the leader had gone to the center of left ideologically and had become a Member of Socialist International of which Mr. Manley himself was a vice President. He attracted the international spot light when he stood with Cuba in sending troops to Angola and Mozambique, and by taking stance against the racist regime in South Africa. He was view as a fierce critic of United States Foreign Policy in the Caribbean region and its Continuing treatment of economic embargo and isolation against Cuba. Mr. Manley had

¹³² Interview- Sir Alister McIntyre, November 14, 2008. Kingston Jamaica

publicly defended the region on its decision to recognize Cuba and opened diplomatic relations. He was indeed a vigorous proponent and campaigner of the New International Economic Order (NIEO). The Europeans were on “Caribbean soil”. Mr. Manley, himself, an economist and a successful trade unionist got an opportunity to break a deadlock in international negotiations and was determined to do so, on behalf of the ACP and the developing world.

The Kingston meeting marked a crucial turning point in the negotiation. The negotiations had stalled because the EEC’s negotiators had no mandate and the ACP States came to realize that the real power in Europe rested not in the Commissions but in the EEC. Failure to make a break through at this meeting would be catastrophic and therefore the ACP was determined not to fail and this created the atmosphere for its success.

Manley’s contribution was legendary. Referring to the prevailing world crisis and recession Prime Minister Manley argued; that “... it was only the final and conclusive evidence of the fact that the World’s economic system as it relates to the relationship between nations has been overtaken by events and is no longer capable of containing the political realities of our times and that it had outlived its usefulness”¹³³.

He further argued that “...the classical notions of free trade in which prices and the movement of resources respond to free market forces cannot inhabit the same world which subscribes to the political notion of equality and international justice”¹³⁴.

He continued to press the case and reiterated that “we will understand that the world cannot permanently contain the gross inequalities of wealth either as between classes or as between nations. We have been proclaiming these truths for a generation and have with each proclamation added to the climate of popular expectation now the

¹³³ Address by Prime Minister of Jamaica, The Honourable Michael Manley at the ACP/EEC Ministerial Meeting, Kingston, Jamaica, Thursday July 25, 1974.

¹³⁴ Ibid.

events of the last twelve months have brought us to that crisis where the entire world demands of its leaders and of its political systems that the will to action be found”.

In addressing what he saw as the truth he said that

“...the world is now familiar with the political rhetoric that summons us to action; it can equally be asserted that we know the problem. We all know that aid from the richer to the poorer countries is of assistance but cannot solve the problems. We also know that transfer of technology can also help. Any new arrangement of the world’s international economic relations which intends to seriously grapple with the problems of poverty and the growing gap between the rich and the poor nations must begin by providing a decisive answer to the problem of the terms of trade”.

He emphatically called for new trade arrangements when he opined that:

“...the principles of the stabilization of real export earnings must form a part of any new arrangements between the A.C.P countries and European community. There must be true commitment on all sides to an acceptance of the principles that the adverse movement of the terms of trade of trade against the countries of the Third World must be brought to a stop and that equitable terms of trade are the foundation of any world economic order that accepts the idea of international justice for all”¹³⁵.

At the end of Mr. Manley’s presentation, the President of the EC Council was obviously moved and responded positively by agreeing to the need for political negotiations on the principles and left the consequential details to be finalized at the technical level. Mr. Manley had made the case for the inclusion of stabilization scheme for fluctuation of prices for agricultural exports. The president of the ACP, the Minister from Senegal ,Babacar Ba called for a solution to be found at the political level and that all efforts be

¹³⁵ Ibid.

made to muster the will so to do must be expended. Francophone Africa had by then decided to permanently drop their insistence on reciprocity.

But before the agreements were finalized, it seemed that some last ditched efforts were under the way to steer the unfolding events into another direction. There, upon resumption of one of the scheduled breaks, neither the chairman of the ACP, Senegalese Minister nor the chairman of the EEC could be found. Both were later discovered locked away in a Hotel room at the conference center conducting their own negotiations, the ACP's response to this side meeting was swift and decisive.¹³⁶

An extensive and well needed break-through came in the Kingston meeting, there were agreements on non-reciprocity, rules of origin and that all ACP States were accepted as economic unit. The EEC also agreed to reduce non-tariff barriers under CAP, the principles of Stabilization but the size of fund was to be further discussed.

There were still some outstanding matters to be settled for example; (1) ACP's proposals for Industrialization on which some promises were made; (2) size of the financial aid package aid and sugar exports. But sugar was destined to be very difficult because of EEC's continued incessant frictions between Britain on the one hand and the Belgians and French on the other over quotas and commitments under CAP and (3) arrangements for bananas, rum and beef.

The ACP had made their position known and had used the opportunity to explain and further clarified some outstanding issues. Mr. Manley had widened the debate by pulling in the political actors at the center of the problems and forewarned that the consequences of failure would be placed squarely at their feet. Mr. Manley's approach put pressure on an already fragile uneasiness in the EEC Council to make a decision to avoid deepening the international economic crises with is precipitous and residual

¹³⁶ Interview- P. J. Patterson, March 3, 2009.

political effects. The Kingston meeting forced the EEC to close ranks and collectively protect the interest of Europe against external threat by taking the necessary actions.

1.16 The final stage of the negotiation

After the Kingston ACP-EEC Ministerial, the negotiations moved into its final stage, but time was running out, as the EEC seemed to have been slowing the process tactically, to use the expiration of time to force the hands of the ACP¹³⁷. The ACP was resolute on the question of time; they were not prepared to let the EEC jeopardize their wider global agenda and therefore had declared their intention not to allow the possibility of not meeting the dead line for the expiration of the Yaoundé and Arusha Agreements to push them into signing an agreement. So, as Europe moved, the ACP countered, a classic negotiating game was been played out. The ACP had enjoined the EEC in using the time-tactics in negotiation. Neither party was willing to give in, but in the end. The Caribbean knew that a new model was their objective and therefore they were willing to play the “waiting” game¹³⁸.

The ASSM were fearful as to the consequence of no agreement when Yaoundé had expired, they were given them the assurances of protection as another Joint Ministerial was set for January 13th, 1975 to try and move things along on the issues of sugar and the size of the EDF, after several arguments and counter positions, it became clear to both parties that one certainty loomed largely; no agreement would be reached to meet the expected deadline for completion.

ACP’s resoluteness was unequivocally expressed by Ramphal when he observed that; ACP had the right to have the record of the meeting reflect the pressure brought to bear on the group by the Community intending to “stampede” the negotiations to close. His suspicion of European tactics came veritable when he further observed that the group

¹³⁷ Interview- Sir Shirdath Ramphal, Bridgetown Barbados, June 8, 2009.

¹³⁸ Interview- Sir Shirdath Ramphal June, 8, 2009. Barbados.

cannot agree to sign an agreement before it did what the Europeans regard “as necessary domestic examination”¹³⁹ but the ACP will strive to reach an agreement. Ramphal exposition bore two important elements of ACP’s tactics. Firstly, they waited because Europe was under domestic pressure and its citizens wanted answers to the international crises and therefore time was turning against them, secondly, the ACP unity was holding. These were positive indicators for the ACP States. However, the draft agreement was ready and further delay would not have added any advantage to the ACP’s cause. But, they refused to sign the trade and aid package in order to secure the sugar agreement. Europe’s difficulties with sugar arose because the main beneficiary of ACP sugar was the United Kingdom which for its own self interests had joined issue with the ACP States and the French had given assurances to its Caribbean territories that it would protect them against ACP suppliers¹⁴⁰.

A further meeting was set for January 30th 1975. However, by then most of the political questions were settled. But the sugar regime was not agreed and remained very difficult and controversial. There, the issue of the size of the EDF was agreed, so too were the issues of banana, beef and rum. The EEC again pressed for Most Favoured Nation (MFN) in the trade package, but, the ACP would not relent.

Sugar was the very last item to be decided and that session was very contentious, so fractious it was that voices were raised and tempers flared. The exchanges had gotten so heated between the ACP sugar negotiator and his Belgian EEC counterpart that only the timely intervention of the Head of the EEC delegation that averted a physical exchange.¹⁴¹

The sugar agreement was reached at about 1 a.m on the 1st of February as Britain agreed for the Community to buy 1.4 million tons of sugar from ACP States, but the

¹³⁹ Ibid.

¹⁴⁰ Interview- PJ Patterson, March, 3, 2009. Kingston.

¹⁴¹ Ibid.

parties could not sign until the French President has removed a veto, which he has earlier placed on Caribbean sugar to protect the sugar producers of Guadeloupe and Martinique from competition. The veto was finally removed at about 6 a.m. when the French team finally located the President¹⁴². The marathon meeting lasted almost 24 hours, and in the end an agreement was reached and the heads of both delegations exchanged Letters of Assent. Armed with an agreement the ACP went into its 7th Ministerial in Accra, Ghana held on the 11-12 February, 1975 and there the document was reviewed and by resolution the formal text of the agreement was adopted.

Signing of the agreement which was originally scheduled to be held in Sudan was set for February 28th, 1975 in the Togo's Capital, Lomé, from which it derived its name.

This historic arrangement has never had any parallel in the annals of trade and cooperation agreements. At the signing, the President of the EEC Commission observed that; the Convention provided answers to some fundamental questions as to North-South relations. For the ACP States the agreement had opened up possibilities. Ramphal, in expressing hope and disappointments experienced during the negotiations observed the value of the potentials of the Agreement and accepted it as a stepping stone for a wider objective, but lamented some unfulfilled expectations¹⁴³.

1.17 An assessment of the agreement

At the signing ceremony, Ramphal had expressed disappointment, but was hopeful, this meant that ACP did not achieved at the table all of what they had wanted. But in light of where they had started five years earlier, they had achieved something on which they hoped to build on.

¹⁴² Ibid.

¹⁴³ Ramphal, Shirdath: The ACP/EEC Negotiations; 'A Lesson in Third World Unity, Ministry Of Foreign Affairs', Guyana, (June 197) p. 49.

For the EEC, the exercise was a learning experience in dealing with the developing countries. But they gave very little, for while Stabex was an innovation, its funding was still in the hands of the EEC and the payment of funds had to meet certain criteria and the quantities of ACP agricultural products including banana could not affect CAP, as banana is not produced in Europe and the supply of the fruit was covered. So, apart from internal commercial competition among EEC corporate interests the deal was favourable as the price of banana was not likely to fall due such as copper, nickel for example were excluded for reasons not unconnected to market prices and constant demand. Sugar which was the largest export commodity of the ACP States which was most important to CAP had guarantees in quantity.

In terms of the rules of origin, the EEC gave up very little because to have lowered the value added to the levels where the ACP had wanted which was 25 percent would have given the ACP States a chance at competing in manufactured goods and possibly attract more FDI. So, the ACP did not gain in this area, so also in the area of industrial cooperation. EEC was not worst off, but succeeded in satisfying the Africans hope for industrialisation under the OAU's Declaration at Abidjan May 12, 1973.

Reciprocity was an item which the EEC had pressed throughout more than any other item. This in the end would have been their most valuable concession but, not just because it held out possibilities for markets share in Africa which was a large outlet for Europe's manufactures goods, but more so, because the issue of justifying it under GATT Most Favoured Nation (MFN) and in particular to those other countries which were of similar economies and stage of development as the ACP States.

The EEC seemed to have come out of the negotiations not with all of what it had wanted for example to get a reciprocal non preference agreement, but they secured three major objectives. Firstly, the integrity of Part IV as an instrument of aid and non industrialisation was achieved, secondly it secured for itself continued supplies of raw material for its industries and finally, staved threatening confrontation with the South and created a respite for Europe to plan for the return of reciprocity.

Before the Agreement was signed the ACP State assembled in Georgetown Guyana to formally sign the Accord which established the group as an entity in global trade relations. But, by 1977, the group met in Fiji and signed the Suva Accord which outlined the extent of the South –South cooperation for industrial development¹⁴⁴.

The implementation of the Convention was a clear and decisive exposition of the value and purposes of the Lomé Regime, its benefits, weaknesses and eventual demise are the issues now to be addressed.

1.18 Lomé II - Lomé IV

The negotiations for the successive Lomé conventions had followed a similar pattern as the first agreement and their outcomes seemed quite predictable. However since the first agreement, Europe embarked upon a process of reclamation¹⁴⁵ and assertiveness and positioned itself to dictate terms.

Since the 1975 Agreement, the ACP states have continuously complained about the responses of the EEC, and that the aid funding was inadequate while the process to access funds under the EDF remained very bureaucratic and cumbersome. The EEC started to pull back on some of the gains the ACP States had made for example, the mechanism for accessing the STABEX fund was very problematic in the implementation and the EEC tried to make change to it, there were problems with the SYSMIN regime.

Lomé II had not seen much changes except for the introduction of SYSMIN to compensate for losses in the mining sector, but by then it was clear to the ACP that the trade arrangements were not making any difference for them in terms of earnings and contemplated further measures to improve ACP trade performance. For example, Suriname made a request for liberalising access for 50 products but the EC declined the

¹⁴⁴ Georgetown Agreement established the African Caribbean & Pacific (ACP) Group of States, while the Suva Accord dealt with the industrial development of the group. See appendix III.

¹⁴⁵ Interview- Ambassador Owen Singh, May 13, 2009.

request¹⁴⁶. The EC had given it undertaking to the ACP States under Lomé II, not to use safeguard measures or other means of protection to hamper ACP development, but, in 1979 the EC threatened Mauritius to reduce exports of textile of face safeguard measures¹⁴⁷.

The shift in relative bargaining position started to show signs from the negotiation of Lomé II and continued throughout Lomé III and IV, for example, the relative ease with which the EC shifted grant resources from traditional projects to the financing of adjustment lending in Lomé IV. In circumstances where structural adjustment was a feature of ACP economies in the 1980's and 1990's and financial support was their priority areas for assistance. The EU opted to use those issues to obtain agreement to a highly conditional use of grant resources from those countries that just previously had successfully resisted the community policy dialogue.

The introduction of political dialogue in ACP agreement was introduced by the ACP States in the joint declaration of Article 4 of Lomé III which addresses the issues of human rights. This was followed up in Lomé IV with further amendments arising from the mid-term review of Lomé .and so, the EU declaration in Article 4 of the Convention, annex III A, effectively incorporated Article 177 of the EU Treaty into the Convention and this was linked to financial support under Article 5(3) of the Convention, a breach of which would attract sanction under the terms of the Convention

Lomé IV was signed on the 15th December 1989 for a period of ten years as opposed to five in previous agreements. This was termed a comprehensive cooperation agreement as it covered broad areas of human rights and industrial development to cultural cooperation. However it was the EC which insisted on the ten years duration.

¹⁴⁶ Address by Mr. Okelo-Odongo, Secretary-General of the ACP Group on "The Lomé Convention as seen from the ACP Perspective" April, 23, 1981.

¹⁴⁷ Ibid.

There is little doubt that after thirty five years of implementation that the Lomé system though not completely useless was a mere “ad hoc device” which served the European agenda at a time of real and perceived crisis for the global political economy which was in transition¹⁴⁸. Indeed, it can be argued that the long term effect of the implementation of the Lomé Convention is to lure the ACP States into a unrealistic sense of achievement and comfort which served to undermined the debate for the New International Economic Order(NIEO) and put very little value to the UNCTAD regime of GSP in preparation for the launch of the Uruguay Round of GATT.

By the time Lomé IV was signed, the EU again was about to expand under the Maastricht Treaty, a new Commission the college of Commissions programmes were under one Commission with responsibilities in DE VIII and DGI as were the newly created European Community Humanitarian Office (ECHO). DGI also dealt with trade and relations with developing countries which was overseen by two other Commissions. In the new Commission this is now divided between four Directorates General (DGs) and ECHO, each with a separate Commissioner¹⁴⁹. This new Agreement has fragmented the development cooperation policy of the EU which made it extremely difficult to penetrate in any negotiation because of the various layers and tiers of authority and the extent of bureaucracy as DGI now has responsibilities for relations of the Community with the United State, Japan, South Korea, Taiwan and China. Trade and commercial policies were placed within this directorate.

DGI was put in charge of central and Eastern European countries and those of the former Soviet Union, Mongolia, Turkey, Cyprus, Malta and other European countries outside of the EU. DGI B had responsibilities for the Mediterranean region, the middle and far Eastern countries; Latin America and Asia while DGI was left to manage

¹⁴⁸ Maizels, Alfred and Nissanke, Machiko.: “Motivation for aid to developing countries” *World Development*. Volume 12. No. 19, (1984), pp. 245-53.

¹⁴⁹ Van Reisen, Mirjam. *EU ‘Global Player’: The North-South Policy of the European Union*. International Books, London (1999), p. 53.

relations with ACP countries and the implementation of Lomé Convention and relations with South Africa.

The insertion of Article 177-181 into the EC Treaty as a result of the 1991 Maastricht Intergovernmental Conference marked an important stage in the history of the EU's development cooperation policy as it provides a road map to the future of the policy. The objectives set in Article 177 are a reflection of the past development policy. The measures taken by Council under Article 170 to further the objectives set in Article 177 shall not accord with Article 179(3) which affects cooperation with the African Caribbean and Pacific countries in the framework of the ACP-EEC Convention. What the Cotonou Convention sought to do is to dilute the special provisions accorded to the ACP in the EU's development cooperation policy now guaranteed by the Treaty but was developed "ad hoc" and piecemeal which led to some inconsistencies albeit maintained and streamlined. In an integrated policy approach, the EU has placed the Mediterranean, Asian and Latin American countries on a similar footing as the ACP States.

A change in EC policy approach to ACP cooperation post Soviet demise had its foundation in the so called green paper which posited that a threshold of change for the twenty first Century ACP is seek a greater prospect for development, as their strength and structure of governance were under strain. There in an effort to raise the quality of the partnership, the EEC has to address political issues in these countries.

The Commission in this regard argued for a restructuring of the future of the EU Cooperation Policy with the ACP around the issue of politics, economics and a social agenda for sustained development and therefore the need for a fundamental shift in Lomé relations was envisaged¹⁵⁰. The true character of the relationship was exposed when Member States of the EU sat in conclave and made their decision as to their course of action with respect to the ACP in order to achieve EU's objectives and did so

¹⁵⁰ McMahon, Joseph A. in Olufemi Barbarinde and Gerrit Faber (Ed,) "The Negotiation of the Cotonou Agreement: Negotiating continuity or change" *European Union and Developing Countries: The Cotonou Agreement*. (Martinus Nijhoff Publishers, Leiden, Boston. 2005), p. 45.

ostensibly without consultation with their ACP partners. They came up with positions so cast, that no amount of debate or persuasion from the ACP States could cause a single iota or a mere scintilla of a shift to accommodate the views of the ACP states. Europe by then was in full charge of the direction it wanted to go in terms of trades and aid support.

The outcome of these negotiations seemed to be already determined. This position raised questions as to the nature of this partnership and its new Euro-centric undertone. And so, as the negotiation opened, the ACP mandate of June 29th 1998 echoed article 177 of the EC Treaty and agreed that the eradication of poverty and integration of ACP states into the global economy would be the focus of the new cooperation agreement.

By 1998, the EU was very strong on the question of human rights in the ACP States and therefore political dialogue in ACP thought not new, was heightened based on the joint declaration of Article 4 of Lomé III addresses the issues of human rights. This was followed up in Lomé IV with further amendments arising from the mid-term review of Lomé IV, and so the EU declaration in Article 4 of the Convention, annex III A, effectively incorporated Article 177 of the EU Treaty into the Convention and this was now linked to financial support under Article 5 (3) of the Convention a breach of which will attract sanction under the terms of the Convention.

Effectively, what was originally a trade and cooperation agreement had been transformed and broadens into a political instrument of EC internal policy position which the EU had long hoped to achieve.¹⁵¹ So by the time Cotonou was signed even the Lomé acquits was changed¹⁵² ostensibly, the ACP no longer stood at the apex of privilege and the ACP States. So, after thirty five years of cohesion and solidarity the

¹⁵¹ ACP Council of Ministers Meeting, Lusaka 1997. *The Courier* No. 47 January – February 1978 Yellow pages p. 111.

¹⁵² Interview- K. D. Knight. Kingston, Jamaica, November 14, 2008. See Georgetown Agreement, 1975 and the amendment, 2003 in Appendix III.

ACP have been split and indeed fragmented into six regions to negotiate further EPA with the EU without any opportunity of further waiver after December 2007.

The dialogues surrounding the issue of aid and commodity price compensation under STABEX and SYSMIN as payments were very slow due to inadequacy of fund and the ACP's call for reform of that system. In the final analysis, the EU demanded that transfer of funds under Lomé had to be conditional on economic reforms in the recipient states. This was structural reform type of conditionality along the lines of those imposed by the IMF. ACP states sought to protect their commercial interest in the Convention and as such expressed their concerns about the impact of the Uruguay Round of GATT/WTO tariff cutting measures reached in December 1993. The EU Commission sought to tentatively defend ACP preferences in a document submitted to GATT/WTO in October 1994, making the case that the Lomé system can be made compatible, through an exception accorded by the WTO or through the declaration of an eventual free trade area between the ACP and the EU¹⁵³.

It is without doubt however, that there was a need to better administer the aid aspect of the Lomé Agreement. Because, the conflicts of economic and moral interests which occupied the national interest of some European States seemed to have overflowed into their eagerness to enforce sanction against states of the ACP or regimes deemed guilty of human rights violation. These conditions, it is argued are more easily accommodated in multilateral or bilateral agreements and not suitable for trade agreements and so, the Lomé Convention became a convenient instrument of European political device to enforce adherence to human rights. It is therefore not surprising that the EU needed to take control of the implementation of its aid projects in ACP states contrary to the spirit and intent of the Lomé Conventions¹⁵⁴.

¹⁵³ The Lomé Conventions: 'The European Union and the African, Caribbean and Pacific states'. Africa today Third ed. (1996), p. 97.

¹⁵⁴ Lister, Marjorie, , *New Perspective on European Development Cooperation*, Boulder, Westview Press, (1999) p. 103. See. Greenidge Carl ,B. "Return to Colonialism? The New Orientation of European Development

The paradigm shift in EC policy and approach to ACP cooperation post Soviet demise was reinforced in the depth of the importance attached to human rights and governance issues which had been previously relaxed in the earlier years. The collapse of the Soviet system exposed the political undertone of the EC's aid and development practices and policies towards developing countries more so, to those in Africa.

The Commission in this regard, pushed for a restructuring of the future of the EU Cooperation Policy with the ACP around the issue of politics, economics and a social agenda for sustained development and therefore the need for a fundamental shift in Lomé relations was envisaged.¹⁵⁵

One of the issues which confronted the Member States of the EU was how to reconcile the failure of past Lomé Agreements to meet their objectives on the one hand and further, to justify its continuation in light of the need for development, and at the same time protect the persona of the EU itself. Further, if the ACP countries are to be integrated into the global economy, a framework had to be developed which was WTO consistent and to avoid at all cost any need for a GATT waiver.

There was general consensus on the need to integrate. However, the reasons advanced by the EU Member States were diverse at the least, for example the UK took the view of the negative impact of GATT waiver on the predictability of trading arrangement, Germany, Austria and the Netherlands argued the need to avoid discrimination against other developing countries therefore this need for a global approach found favour with other Member States, while France argued against globalizing the Convention in preference of the need to keep focused on Africa, Belgium, Italy, Portugal and Spain argued for regional economic partnership agreements as a means of revitalizing the Lomé relationship.

Assistance, ACP Secretariat, (1997).

¹⁵⁵ See. McMahon, Joseph A, in Olufemi Barbarinde and Gerrit Faber ed, Op.Cit. p. 45.

It is very instructive that these Member States of the EU sat in conclave and made their decision as to their course of action with respect to the ACP in order to achieve their objectives and did so ostensibly without consultation with their ACP partners and came up with their positions so tightly cast, that no persuasion from the ACP States could amount to a single iota or a mere scintilla of factual presentation was sufficient to accommodate the views of the ACP states on the part of the EU. The outcome of these negotiations seemed to be already determined.¹⁵⁶.

And so as the negotiation opened, the ACP mandate of June 29th 1998 echoed article 177 of the EC Treaty and agreed that the eradication of poverty and integration of ACP states into the global economy would be the focus of the new Cooperation Agreement.

Effectively therefore what was originally trade and cooperation agreement had been transformed and broaden into a political instrument of EC internal policy position which the EU had long hoped to achieve¹⁵⁷ so, by the time Cotonou was signed, even the Lomé acquis was changed¹⁵⁸. Europe's external trade policy has been inextricably linked to its social policy and was transported into the ACP-EU cooperation as a part of a deliberate design and strategy to enforce its governance standards by tying aid support to trade and political questions. The ACP States could not resist the linkages applied by the EU, but succeeded in getting them to relent on their demand to apply sanctions to the entire group of ACP States, were a Member State to have been guilty of any violation of Human rights conditions¹⁵⁹. The ACP States had previously introduced Human and political rights issues into the Lomé regime in the 1980s as part of its offensive strategy in trying to get the EU to be more involved in the political questions impacting some African States. However, those early initiatives were never

¹⁵⁶ Interview: K.D Knight, Kingston, Nov.14, 2008.

¹⁵⁷ ACP Council of Ministers Meeting, Lusaka 1997. *The Courier* No. 47 (January – February 1978), p. 111.

¹⁵⁸ Interview- K. D. Knight. November 12, 2008. See Georgetown Agreement.

¹⁵⁹ Ibid.

intended as conditionality's to be imposed, but instead to be used as mere offensive instruments of good governance in the apartheid era.

Lomé IV the EC had grown in self confidence, stature and importance more so than at any time in its history buoyed by the prospect of completing the single integrated market in 1992 and the pending accession of an unprecedented list of new entries to the union coupled with the emergence of the new geo-political landscape in Europe. These developments added further pressure on the ACP States not only in the areas of aid support, but in trade... The EU was constrained financially with internal demands so that its ability to concede to ACP demands in many respect was limited and circumscribed, for example, Greece and Portugal feared that the liberalization of trade in agricultural products would affect their economies, while Greece opposed an extension of SYSMIN because it argued that it would adversely affect Greece's bauxite production.

The timing of the negotiation for Lomé IV is of significance because of the EU's involvement with the Uruguay Round of GATT which was ongoing at the time of that Round. The EU wanted the support of the ACP state during those negotiations and secured that support through its relations with the ACP¹⁶⁰ under the Lomé

In the context of the Uruguay Round negotiation, the EU was cognizant of the repercussion on Lomé of reducing tariff further at the multilateral level and so before the negotiation for Lomé IV opened the EC announced its intention to cut tariffs on certain tropical products, for example, coffee, oilseeds, jute and hard fibers, manioc tobacco and spices. This move compromised the integrity of Lomé which was already being affected by the expansion of the EU to take in the newly independent state of Eastern Europe. This also compounded the ACP's position as it compressed EU's timing for the negotiations with the ACP.

¹⁶⁰ Interview- Senator K. D Knight. Kingston, Jamaica, November 12th 2008.

The EU was therefore in no mood for a protracted negotiation of the Cotonou Agreement as delay could be inimical to its interest. They therefore pressed for an early conclusion of those negotiations. So, while the internal political wrangling continued in the EU on issues of aid for ACP and other trade issues had delayed their negotiating mandate and thus the start of its negotiation with the ACP. The ACP states craved some certainty regarding many areas of their negotiation and what was the likely position of the EU. Because, it was only on the eve on the opening of those negotiations that the EU settled its mandate. This further compounded the time frame to negotiate an agreement and the EU was not prepared to alter its agenda in any material respect to benefit its ACP Partners. The EU by then was well aware of the ACP States dilemma and internal weaknesses but was not willing to aid their case. From there onwards, ACP unity was fundamentally fractured and the cracks began to open.

ACP States were very slow in accepting the fact that their interests were affected by the revolutionary changes taking place in Europe and the likely impact on their trade and financial relations and also on the nature of its political cooperation. The political dynamics of Europe had changed so also, its approach to external relations with ACP States¹⁶¹ and other developing countries.

To this end, the Caribbean to the initiative to organise a conference in London on the theme “1992 and the Caribbean” to examine the implications of 1992 for the region but in as much as the EC Commission gave assurances that post 1992 European would not become a fortress. But will develop through partnership in which there will be benefits to EC and non EC countries alike because the completion of the single market would also give major boost to the EC and that would in turn have favourable repercussions for its internal relations. In this regard, the 1992 integration would not mean greater protectionism as the EC has a great stake in free and open international trade and that

¹⁶¹ Interview- K.D. Knight, November 12, 2008.

the EC's external economic policy in transition post 1992 would take place in harmony with its existing international obligations both multilaterally and bilaterally.

But soon after Lomé IV was signed the EC embarked upon a review of its relationship with the Third World and commissioned a green paper which was adopted by the European Commission on the 20th November 1996 which addressed all aspects of the ACP-EU relations since the 90s. This opened a debate on the future of the relationship. The goal of the EU to revitalise ACP-EU relations and opened up new horizons was still a key part of the Union's identity¹⁶² following upon the midterm review of the relations which commenced paving the way for the Cotonou Agreement of 2000.

The ACP States were so underprepared for that negotiation that apart from the issues of cultural cooperation and human rights¹⁶³ the only changes which emerge in Lomé IV was mainly those which the EU wanted including the ten years duration for the Convention with the funding levels review after five years. It became clear from the tenor of the midterm review that it would not be business as usual between the parties. The midterm review was launched in May 1994 and should have been completed by March 1995 but continued to the end of June. The question of aid was a vexed one which the EC wanted not to address because the desire to reformulate the entire Lomé regime in the wake of the end of the Cold War was a crucial issued which was raised as Europe wanted to have more control over the Lomé Convention.

At the very heart of the relationship between ACP and EU was the political and economic question which was best expressed post Cold War assessment. During the midterm assessment it was felt that the fundamental changes in the international political landscape following the demise of the Soviet system called for a morefar-reaching examination of the Convention than just valuing the aid package. The

¹⁶² Forward to the EC's Green Paper on relations between the Europe Union and the ACP countries on the eve of the 21st century, Changes and Options for a New Partnership. European Commission Directorate-General VIII, Brussels. (November 20, 1996).

¹⁶³ News Round Up, the A.C.P-EEC Negotiations for Lomé IV, *The Courier* 117, (September – October 1989), p.1.

Commission was in some haste to effect changes to modernise the convention. By 1990, the Convention had no political competition from the Soviet system while large aid donors such as the World Bank, USAID and the EU had reached a consensus on the direction of the market economy which they wanted to pursue with developing countries. European Member States wanted to take control of Lomé and further shift the balance of power and consolidate the relationship more in favour of the EC partners. It was the ACP-EU Joint Assembly which had to remind the EU that the mid-term review was intended for a review of Lomé IV and not a renegotiation of a new Lomé. It became clear from the result of the midterm review as to the directions the EU wanted to go with respect to Lomé. They were impatient for change so by the time the review was completed the motion was set in place for the Commissioning of the green paper which provided the framework for Cotonou and the EPA. However, PJ Patterson of Jamaica warned of the dangers to ACP economies and the problems which would ensue if Europe continued to pursue the proposed changes to its internal arrangements without due regards to the ACP's concerns. He made clear the position of the Caribbean states by drawing to the attention of the political leaders of the EU and Heads of State of ACP as to the CARICOM's main concerns on the draft proposals emanating from the European Commission which were outlined as: The over-concentration on political issues which the EU proposed for address almost exclusively in the first phase of negotiations 1998-2000 deferring the trade and economic aspects of the new arrangements for the period 2000-2005. Mr. Patterson was concerns about;

- a) The EU's unilateral approach in setting its own selective political criteria on which to judge ACP states in making its decisions on future ACP/EU trade and economic cooperation. These criteria were focused on ACP countries treatment of issues relating to human rights democracy and the rule of law and good governance and
- b) The crucial importance of maintaining the ACP Groups solidarity which had played a key role in achieving the Lomé Agreements. He argued that the Caribbean region remained of the view that any new cooperation agreement should support existing

regional arrangements and not dismantle existing structures for cooperation between the ACP and the EU. While accepting the need for a new ACP-EU agreement to be compatible with WTO rules, he asserted the Caribbean's intention to secure no lower levels of market access from that which is presently provided to ACP countries under the Lomé Convention¹⁶⁴.

1.19 Cotonou and the dismantling of the Lomé regime

The European Union had shown clear intentions from the mid-term review of Lomé IV that it was about to institute sweeping policy changes to its relations to developing countries and the ACP States were not being spared, the policy documents and official pronouncements were pointing in that direction¹⁶⁵. So, by the time Cotonou was negotiated the mood for change in Europe had taken effect and ACP diplomacy was by then on the defensive and non-responsive. The approach to negotiating the Cotonou Agreement was quite different on the part of the EU as compared to earlier experiences. The green paper set the tone and directions for the Cotonou arrangements. So, by the time Cotonou negotiations were opened, the fate of non-reciprocal preferences under Lomé were known in light of the influence of the World Trade Organisation (WTO) and the rejection of UNCTAD's development policies in terms of global trade directions.

The Dispute Settlement Body (DSB) of the WTO had ruled on the EU banana regime in the case brought by non-ACP Member States¹⁶⁶. There, in dispute was the EU Regulation establishing a common organization of the market against which dollar-zone

¹⁶⁴ Speech by Honourable P.J. Patterson, Q.C. M.P, Prime Minister of Jamaica to the 17th ACP/EEC Joint Council Meeting, Jamaica Conference Center, Kingston, Jamaica. May 21, 1992.

¹⁶⁵ The EC published several documents indicating of its new policy positions. The EC Green Paper on the relations between the European Union and the ACP Countries on the Eve of the 21st Century, Luxembourg: Office for Official Publications of the EC, 1996. EC Guidelines for the Negotiations of new Co-operation Agreements with African, Caribbean and Pacific (ACP) Countries. Luxembourg: 1997, The Lomé Trade Regime, Luxembourg, 1997, An Analysis of Trends in the Lomé IV Trade Regime and Consequences of Retaining it. Luxembourg 1999.

¹⁶⁶ For a full discussion of the WTO ruling on the Banana regime see Komuko, Novio. 'The EC Banana regime and Judicial control' *Journal of World Trade* Vol. 34 No. 5 October 2000 p. 1.

exporters had objected and challenged twice. On their second challenge the WTO decided in their favour. In the view of the Tribunal the Lomé waiver granted by GATT was limited to preferential treatment so required by the Convention and therefore could not be extended to all preferential treatment which the EU may want to extend to ACP.

Both the ACP States and the EU went to the negotiating table fully aware that under the provisions of GATT/ WTO, preference erosion had affected the Multi-Fibre Agreement (MFA) and therefore would affect textile and clothing which the ACP States exported to the EU for which they had exemptions since the 1970s. The challenges to the Lomé Agreement covered a wide range of exports of the ACP States more particularly: sugar, bananas, rum, beef and veal are under threat. Neither side took any positive step to address these problem at the multilateral level, to cushions it the impact on Lomé

During those negotiations, the EU also had to contemplate the pending enlargement of its Membership by accession of countries from Central and Eastern Europe and the impact of reform of its internal policies principal of which was the Common Agricultural Policy and issue of aid. So also it had in mind the development of relationship with countries in the Mediterranean. .

The severity of the impact of the erosion of trade preferences had placed the Caribbean in a very difficult spot from the beginning. For example, the phasing out of rum, modernizing of banana regime and the replacement of the licensing regime for ACP bananas and the cut –backs in set in motion by the reform of the sugar regime decided by the EU in November 2005, had very serious economic consequences for the region.

The starting point of the EU mandate was compatibility with WTO rules as the Cotonou Agreement had committed the EU and ACP States in a defensive position within the WTO of their own arrangements in light of what had taken place in the 1990's and the challenge mounted by the United States and others. The issue of compatibility they argued was not to be measured in terms of current but futuristic possibilities.

Article 37(7) of the Cotonou Agreement speak to conformity with the WTO rules then existed and therefore future agreements are not confined by the scope prescribed by the current WTO rules and therefore opens a flexibility of interpretation which allows negotiators to anticipate certain dynamism to allow them to conclude a convention then seek WTO approval.

The Cotonou Agreement was intended to be a cornerstone arrangement for the return to reciprocity. It is argued that in the negotiations for the Cotonou agreement Europe used the “time honoured technique of the carrot and stick” to achieve its objectives. Cotonou was therefore cast in line with the WTO, and became the “bridge” to make the cross over to compatibility to remove the non- reciprocity type of trade regime¹⁶⁷.

The Economic Partnership Agreement between the ACP states and the EU should secure an opportunity to accelerate ACP’s regional and global trade integration and an important tool for development and the eradication poverty ¹⁶⁸. The Cotonou Agreement established a comprehensive new framework for bilateral economic relations between the EU and ACP by promoting economic growth and development as well as a smooth and gradual integration of ACP states into the world economy. From the perspective of the EU, two main objectives stood out. First, the EU wanted to include a perspective that combined politics, trade and development. In fact, the EPA’s aimed not only to provide improved access for ACP’s goods and services to E.U markets to enhance trade in services but to increase cooperation and investment. So, the Cotonou arrangements went beyond the standard features of a free trade agreement by enhancing the political dimensions explicitly addressing corruption, promoting participatory approaches and focusing development policies on poverty reduction. The main argument for this objective is that the export performance of ACP States had been far from satisfactory despite the non-reciprocal trade preferences for products

¹⁶⁷ Interview- Nornan Girvan, June 15, 2009. University of the West Indies (UWI) St. Augustine T&T.

¹⁶⁸ Bormann, Axel and Matthias Busse, ‘Development Policy The Institutional Challenge of the ACP/EU Economic Partnership Agreements’, *Development Policy Review* Vol. 25 No. 4 (July 2007), p. 403.

originating in the ACP as part of the predecessors of the Cotonou Agreement the Lomé I to IV Conventions. The share of the EU market achieved by ACP States declined from 6.7 percent in 1976 to three (3) percent in 2005.¹⁶⁹ Moreover, about 68 percent of total ACP export to the EU consisted of agricultural goods and raw materials, and some 74 percent is concentrated in only ten products. Additional preferences on market access alone were very unlikely to benefit ACP in the future. However, the EU failed to evaluate the root causes for ACP's performance. For example, the impact of Lomé restrictive RoO, lack of FID and debts.

Further, among the various reasons for the disappointing export performances and general development of ACP States, is the quality of their institutions. This has been a major impediment which needed EU's long-term support to be reformed. However, the greatest single disappointment of Lomé era has been the failure of the ACP Group of Developing States to actualise the planned industrialisation of the South, through South South cooperation¹⁷⁰. Secondly; the EU wanted an agreement which is WTO compatible. The non-reciprocal trade preferences established under Lomé Conventions required a WTO waiver as they are neither restricted to the least developed countries (LDC's) nor were they granted to all developing countries. At the Doha conference (2001) the EU obtained the last waiver and it expired in 2007 and therefore the ACP States would have to substantially open up their market to EU products within twelve years, 2008 to 2020. In the end, the EC achieved what it had always wanted to have, a reciprocal trade¹⁷¹. So, by 2007, the EC had returned to its original position of the 1970s which was to negotiate separately with all three groups, but in parallel negotiations and pushed for reciprocity¹⁷²

¹⁶⁹ EU Commission, 2006.

¹⁷⁰ Interview- PJ Patterson, March 3, 2009. Kingston, Jamaica.

¹⁷¹ Ibid.

¹⁷² Interview- Sir Alister McIntyre Nov.12, 2008. Kingston Jamaica.

1.20 Conclusions

Although Lomé offered generous terms of preference for developing countries in trade and development Co-operation provisions with the objective of promoting trade between the ACP states and the Community, the obstacles in implementation played a significant role in preventing the success of the agreement in its delivery of ACP's economic and social development. .

The constant whittling away of the benefits offered to ACP States under Lomé coupled with the level of economic decline in almost all of the economies of the ACP countries points to the marginalization of the importance of ACP in the context of global political economy. The marginalized institutional framework and cooperation apparatus of the ACP-EC trade regime has been used by the EU to provide support for its global profile of its institutional importance in the global political economy. Therefore, except for their support at the multilateral level, ACP States had become less and less important to the EC. It was therefore without doubt that there was a great need to better administer the aid aspect of the Lomé Agreement. However, the conflicts of economic and moral interest which occupies the national interest of some European states seem to have overflowed into their eagerness to enforce sanction against states of the ACP or regimes deemed guilty of human rights violation are more easily accommodated in multilateral or bilateral agreements and so the Lomé became a convenient instrument of European political interest in human rights issue. It is therefore not surprising that the EU needed to take control of the implementation of its aid projects in ACP States contrary to the spirit and intent of the Lomé Conventions. The ACP States found themselves bound up in an economic system which predetermined their destinies, a situation which they themselves had not created and had not benefited and which was never created with their best interest in mind, but was so designed to meet the urgency of the then existing pre World War II colonial economic order which was fast failing and needed new directions. In circumstances where the need for a new direction found expression in the creation of the post World War II institutions which lay the foundation

for the political independence of European colonial holdings without making any real provision for their economic independence and their integration into the global economy. It was just for a matter of time that the carefully disguised EEC's strategy under Lomé, and so craftily implemented that the ACP would err and the EEC got its way and achieved its goal. The negotiations of the Lomé Agreements since 1975 have highlighted the weaknesses and strengths in the trade and diplomatic strategies of both the ACP states and the EC and therefore the Lomé regime cannot be seen as a total failure, but the fault of each side to advance their interests by working together as true partners. The EU resisted involving the ACP State in many crucial areas of its policies.

The EPA negotiations within the context of Cotonou, were launched on the 27th September 2002 to define a new set of arrangements and focus on WTO compatibility, the substratum of which was to achieve the removal of the barriers to trade and enhance cooperation in trade related areas in order to impact growth and deal with the new development objectives of Cotonou.

It is therefore argued that the basis of Lomé was indeed a response to the frustration faced in UNCTAD by ACP states which seem to have had political "clout" but no real economic power. This factor coupled with the fear of Soviet influence penetrating these economies and the threat of Commodity cartels made it imperative for the North to seize the opportunity to open up a different type of relationships with their former colonial territories at a time when the North had had no real answer to the urgency of an evolving Third World political Militancy for economic reforms of the global trade arrangements and therefore found it convenient to negotiate than to confront.

The Cariforum states entered the negotiation for a new EPA with the EU to replace the Cotonou Agreement signed in 2000 and for the new arrangement which came into effect on the 1st January 2008, while the aid aspect of Cotonou will continue separately until 2020. The Agreement was signed on the 16th of October, 2008 in Bridgetown, on the Caribbean island of Barbados.

CHAPTER TWO

Negotiating the CARIFORUM-EC Economic Partnership Agreement(EPA)

2.1 Introduction

The Lomé era came to an end; the regime had served its purpose and had become redundant in the context of the emerging trade post Uruguay. The phenomenon of Globalization has become the reality of the Global political Economy and the majority of European States, which had no colonial link or history to the ACP felt no duty to their part to provide one-way preferential trade and development aid, more so to countries which are defined as middle-income or developing countries, a group which include most of the CARIFORUM States. It was never the policy of Europe to give non-reciprocity trade preferences, but the circumstances of the early to mid 1970's forced the advent of the Lomé convention. The changes in the Global geopolitics and the result of the Uruguay Round presented the opportunity for other countries to persistently challenge the EU's non-reciprocity arrangement with the ACP, more so for commodities such as banana and sugar and to a lesser degree semi processed rum and also some the finished product. When compared to the other ACP configuration the CARIFORUM ranked 5th in trade volume to the EU, and when taken as a whole, EU's trade with Africa far exceeds, that of the Caribbean.¹⁷³ The Caribbean was well aware that, its value to European market had diminished over the years.¹⁷⁴ However, the CARIFORUM saw the EU as a major source of investment flows and trade particularly Tourism. The Region had small trade surplus with the EU in 2006¹⁷⁵ and it recognized that its growth area for trade did not lie in trade in goods, but in services.

¹⁷³ Eurostat, European communities 2007. EU-27 Trade with ACP Regions in 2006.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

Table 1: Value of Domestic Exports to the EU by CARICOM Countries: 2004 - 2008

	US\$000				
CARICOM COUNTRIES	2004	2005	2006	2007	2008
CARICOM	987,065	893,925	2,267,464	2,500,599	3,496,781
MDCS	865,044	799,290	2,144,829	2,387,185	3,382,165
BARBADOS	36,275	40,549	39,622	37,375	42,120
GUYANA	183,173	208,307	182,640	237,950	243,950
JAMAICA	424,534	343,443	481,164	564,520	658,273
SURINAME	*	*	-	-	-
TRINIDAD & TOBAGO	221,063	206,991	1,441,403	1,547,340	2,438,092
LDCs	122,021	94,636	122,635	113,414	114,616
BELIZE	60,686	55,667	84,357	82,299	79,116
OECS	61,335	38,968	38,278	31,116	35,500
ANTIGUA & BARBUDA	*	103	-	62	-
DOMINICA	7,422	6,869	7,622	5,134	5,202
GRENADA	10,127	5,378	1,878	2,438	2,667
MONTserrat	0	0	-	-	0
ST. KITTS & NEVIS	9,673	60	122	141	84
SAINT LUCIA	22,052	16,014	19,259	13,943	22,977
ST. VINCENT & GRENADINES	12,060	10,544	9,397	9,398	4,571

Source: CARICOM Secretariat (2008)

[www.caricomstats.org/Files/Database/Trade/eXCEL%20FILES/CC EU.htm](http://www.caricomstats.org/Files/Database/Trade/eXCEL%20FILES/CC%20EU.htm) Down loaded April 30, 2010.

http://ctr.sice.oas.org/trc/CommonDocs/CARIFORUM-EU_Economic_Partnership_Agreement.pdf

Key:-means Nil; *means not available

Table 2: Value of Imports from the EU by CARICOM Countries: 2004-2006

	US\$000				
CARICOM COUNTRIES	2004	2005	2006	2007	2008
CARICOM	2,079,906	1,821,804	2,014,134	2,245,061	2,526,839
MDCS	1,859,210	1,542,321	1,721,576	1,935,034	2,294,716
BARBADOS	195,852	210,390	222,557	222,842	232,613
GUYANA	54,359	66,752	89,087	115,296	109,031
JAMAICA	314,078	340,529	477,398	453,005	505,228
SURINAME	177,560	249,736	241,144	287,165	237,463
TRINIDAD & TOBAGO	1,117,361	674,916	691,390	856,727	1,210,382
LDCs	220,696	279,482	292,558	310,027	232,123
BELIZE	25,540	30,723	42,591	36,609	45,960
OECS	195,156	248,760	249,968	270,417	186,163
ANTIGUA & BARBUDA	*	59,326	58,303	70,275	-
DOMINICA	19,512	21,026	19,307	20,902	20,817
GRENADA	30,706	46,422	37,726	39,759	39,231
MONTserrat	4,678	3,183	2,385	2,678	2,620
ST. KITTS & NEVIS	18,547	19,756	17,950	24,622	21,116
SAINT LUCIA	85,572	63,251	77,553	65,582	54,428
ST. VINCENT & GRENADINES	36,140	35,795	36,744	46,599	47,951

Source: www.caricomstats.org/Files/Database/Trade/eXCEL%20FILES/CC_EU.htm

http://ctrc.sice.oas.org/trc/CommonDocs/CARIFORUM-EU_Economic_Partnership_Agreement.pdf

Key:-means Nil; *means not available. CARICOM's Major trading partners are: TheUSA, Canada & Europe.

The conclusion of the Cotonou Agreement on the 23rd June, 2000 signalled the end of the non-reciprocal trade arrangements which started under the Lomé Convention of 1975 between the European community and the African Caribbean and Pacific (ACP) group of states. The Agreement led to some changes to the Georgetown Agreement which bound the ACP States as a collective group. Shortly after the signing of the Cotonou Agreement, the ACP's Council of Ambassadors were mandated by the Council of Ministers to revise the Georgetown Accord and submit proposed changes to the Council for approval¹⁷⁶. The Accord was amended to reflect the realities of the changed circumstances of the ACP States in the context of the Eu's global trade agenda.

The negotiations for the Economic Partnership Agreement (EPA) between the CARIFORUM group of African Caribbean and Pacific (ACP) States was based upon the Cotonou Agreement which outlined the nature of the regime with which it should be replaced by the 31st of December 2007.

The EPA negotiations were conducted in two phases starting with the all ACP-EC phase which was launched on the 27th of September 2002 in Brussels and concluded on the 2nd of October 2003 when the ACP Council of Ministers and the EC Commissioners for Trade and for Development and Humanitarian Aid jointly declared the adoption of the Joint-Report on the result that phase. The report served as the guide for the negotiations at the regional level¹⁷⁷ which was the next phase.

The CARIFORUM Group of ACP States and the EU launched negotiation for the EPA on April 16th 2004 and concluded in the "early hours" of the morning of October 16th 2007 in Bridgetown Barbados when the Agreement was initialled by Ambassador Richard Bernal of the CARIFORUM group and Karl Falkenberg of the EC.

¹⁷⁶ Decision no.3/ LXXIII/ 01/ of the 73rd session of the ACP Council of Ministers held May 9-10 2001. Brussels.

¹⁷⁷ European Commission Director-General for Trade, Brussels, (15 September 2004). Pacific ACP-EC EPA Negotiations Joint Road Map.

The negotiations further exposed the nature of the relationship between the CARIFORUM States and the EC in its historical context, because the EC having decided its external trade policy sought to negotiate with the ACP regions to fit them within its wider trade agenda in the context of the Global political economy.¹⁷⁸

This chapter examines the approach of the CARIFORUM States in negotiating the Economic Partnership Agreement with the European Commission highlighting its preparedness, trade strategy and policies, the offensive and defensive tactical positioning of these States in their commercial diplomacy from the launch of the negotiation to the signing of the Economic Partnership Agreement with the European Union and its member states on the 15th of October 2008 in Bridgetown, Barbados.

2.2 Background

The CARIFORUM States had participated in the all ACP phase of the negotiation for the EPA. Leading up to the launch of that phase, the ACP States had completed their preparatory work through the establishment of an advisory group of high-level trade experts to assist them. In addition, the ACP group got support from some its regional configuration which had competence and experience in the main areas for negotiations. Support was also sought from the United Nations Conference on Trade and Development (UNCTAD).

The 75th session of the ACP Council of Ministers held in Punta Cana, Dominican Republic on the 26th-27th of June 2002 approved the ACP negotiating guidelines¹⁷⁹

¹⁷⁸ Interview- Anthony Hylton, former Jamaican Minister of Foreign Affairs and Foreign Trade, February 20, 2009. Kingston, Jamaica.

¹⁷⁹ The guidelines identified the following issues for discussion at the all ACP phase of the negotiations: principles, scope and content, special and differential treatment, financing the cost of adjustment, rules of origin, standards, sanitary and phytosanitary measures, custom and administrative cooperation, framework agreement on trade in services sector, fisheries, treatment of trade related issues such as competition policy, investment promotion and protection, trade and environment, institutional matters , modalities for the phasing of the negotiations and the resultant implementation issues , dispute settlement mechanisms, safeguard measures, legal status of the agreement, support measures to overcome supply constraints, capacity building, treatment of commodity protocols, trade facilitation, evaluation of the impact of CAP

which was prepared by the group of experts and instructed the Ministerial Trade Committee to prepare the procedural guidelines for the launch of phase one.

It was therefore anticipated that at the all ACP phase there would be binding commitments made and only country or region specific issues would be addressed at the regional negotiation phase. This was one way of achieving uniformity in the negotiated outcome at the wider ACP level, while the region specific issues were to be dealt with at the regional level¹⁸⁰.

reform, on agricultural exports, WTO-compatibility, product coverage and transitional periods and arrangements with respect to the establishment of the FTA, investment promotion schemes, including measures to promote the transfer of technology, know-how and skills. The regional phase of the negotiation would cover *inter alia*, tariff negotiations and any other specific sectorial commitments at national or regional level as the case may be and issues of specific interest to ACP countries or regions.

¹⁸⁰ Interview- K.D. Knight, former Jamaican Minister of Foreign Affairs and Foreign Trade, November 12, 2008. Kingston, Jamaica.

Table 3: All ACP schedule for EPA Negotiation

Dates	Negotiation Action	Review
June – Sept. 2002	<ul style="list-style-type: none"> • Establishing Negotiating Groups. • Appointment of Ministerial Spokespersons. 	
Sept. 2002	<ul style="list-style-type: none"> • Formal launch of the negotiations. 	<ul style="list-style-type: none"> • Meeting of ACP MTC. • Meeting of Joint MTC. • Special Session
Oct. 2002 – March 2003	<ul style="list-style-type: none"> • Development of negotiations documents and positions 	<ul style="list-style-type: none"> • ACP & Joint MTC to review progress
March – June 2003	<ul style="list-style-type: none"> • Negotiations at technical level – Phase I issues 	
June – July 2003	<ul style="list-style-type: none"> • ACP – EU Ministerial round of negotiations – Phase I issues 	<ul style="list-style-type: none"> • ACP Council of Ministers to review progress.
Sept – Dec. 2003	<ul style="list-style-type: none"> • Development of legal texts for the all ACP – EU Agreement • Technical level preparations for approach to subsequent negotiations. • Start of Phase II of EPA negotiations 	
2004		<ul style="list-style-type: none"> • ACP – EU consultations on the situation of non-LDCs which are not in a position to enter into EPAs.
2003 – 2007	<ul style="list-style-type: none"> • Phase II of EPA Negotiations 	
2006		<ul style="list-style-type: none"> • Formal ACP – EU review
2007	<ul style="list-style-type: none"> • Drafting of legal texts and conclusion of the agreements 	<ul style="list-style-type: none"> • ACP – EU Council to formally conclude negotiations.

Source:

ACP/ 61/056/02 [Final] Brussels 5th of July 2002. Guidelines for the negotiations of Economic Partnership Agreement

The all ACP phase was not successful for the ACP States because the European Commission's slowness in responding to the ACP's demands and concerns. The EC maintained the view throughout the entire negotiations that the concerns raised by the ACP States were already addressed in the Contonou Agreement so that by October 2003 very little progress was made. The year long stalemate between the two sides was broken when Pascal Lamy, the EU's Commissioner for trade at the Joint Committee Meeting in Castries St.Lucia In March, 2003, offered to commence negotiations at the regional level with any region which was ready, even before the all ACP negotiations were closed. That offer was accepted by the Eastern and Southern African Group of ACP States. Therefore, by virtue of those actions Europe had, with the help of the COMESA configuration effectively ended the all ACP phase of the negotiations. The rest of the ACP grouping was left in an untenable position and quite vulnerable. The Council of Ministers on October 1, 2003 realising that the ACP States could not manoeuvre, decided to conclude that phase of the negotiations early in 2004.

The EC wanted to negotiate the details of the EPA at the regional level because for them it would be too difficult to negotiate some areas for example, the so called "Singapore Issues" at the all-ACP level as they were well aware that the ACP States and other developing countries were collectively and resolutely opposed to these issues¹⁸¹.

The EC preferred to negotiate those tough issues at the regional level where they believed that a greater possibility existed for them to achieve their global objectives than to face the entire ACP as a group. However, the ACP wanted to negotiate as a group to get an agreement on the broader framework within the ambits of the understanding of the developing countries' trade objectives at the WTO to include the Doha Development Agenda. Both positions seemed diametrically opposed in terms of the way forward

¹⁸¹ At the WTO ministerial in Seattle and Cancun, the developing countries band together and opposed the negotiation of the "Singapore Issues". These are areas which are very vital to Developed economies of Europe, the USA and Japan.

which resulted in a gridlock, but while some members of the ACP group were disappointed that Pascal Lamy made the offer to negotiate with any region that felt they were ready to commence negotiations even before the all ACP phase was closed, they were even more disappointed in its acceptance. The view is widely shared that whatever semblances of ACP solidarity which may have remained were for all intent and purposes effectively removed in Castries, St. Lucia where the offer was made by the EC and accepted by one among the ACP Group¹⁸².

This development was particularly damaging to the ACP's expressed agenda, solidarity and cohesiveness, because in 2002 the ACP had established a frame work to guide the negotiating process which encompassed the need to remove barriers in trade in conformity with article 36 (1) of the World Trade Organization (WTO). Their approach to the negotiation was to keep a steady focus on trade issues in the wider global trade arena and to see to what extent they could infuse some flexibility particularly at the WTO bearing in light of the requirement for noting the agreement at the WTO.

It was therefore the intention of the ACP Group to enhance its network in all major forum of trade discussion and to maintain its long standing tradition of unity, solidarity and cohesion within the group. It therefore behoved them to agree on a common approach to the negotiations and the pushed for the following outcome.

- 1) EPA's which were capable of sustaining development.
- 2) Enhance ACP unity and solidarity.
- 3) Preserve and improve upon the Lomé' acquis
- 4) W.T.O compatibility regarding trade in Goods.
- 5) Coherence and consistency.

¹⁸² One Cariforum interviewee took the view that the ACP solidarity had waned over the years since the first Lomé in 1975. Another felt that the Francophone Africans were always the weak link in the ACP group and that they accepted Lamy's offer because they believed that an additional financial package would be made available for the EPA and therefore to negotiate early would have benefitted them.

- 6) Flexibility
- 7) Regional integration priorities
- 8) Legitimacy and the provision of additional resources and support for the adjustments which would accompany the EPA implementation.

The objective of the group was therefore to seek to:

- a) Create a special fund for EPA implementation separate from the European Development Fund.
- b) Address supply side constraint, diversification, improved productivity and competitiveness.
- c) Attract Foreign Direct Investment (FDI) by garnering resources for investment promotion.¹⁸³

The EU however, paid little attention to the lofty goals of the ACP States during the negotiations and proceeded to hold out on its mandate. In the end, there was neither a legally binding framework nor any agreement on specific areas. Part of the problem faced in phase I was that both sides could not agree whether the result of the all ACP phase was to be legally binding or a mere declaration of understanding. There were fundamental differences on both sides as to the role of phase one as the EC did not want a legally binding framework and it argued that the Cotonou agreement already provided the framework. So, seven months before the scheduled completion of phase one, the 4th ACP-EU Joint Ministerial Trade Committee (JMTC) held in ST. Lucia on the 1st of March 2003 proved to be a major turning point in the negotiations.

This meeting was significant to the CARIFORUM States because it afforded the region to state its position to the ACP at two levels, firstly at the ACP-Joint Ministerial level and secondly, at the CARIFORUM regional level. At the ACP level, Prime Minister Kenny Anthony of St. Lucia in his address to the meeting of the all ACP-EU Joint Ministerial

¹⁸³ ACP/ 61/056/02 [Final] Brussels 5th of July 2002. Guidelines for the negotiations of Economic Partnership Agreement.

Trade Committee (JMTC) emphasised that what the ACP was negotiating was not a traditional Free Trade agreement, but to craft an arrangement to bring the relationship with Europe in line with the present realities and to promote further cooperation. He stressed that the development aspects must go beyond issues of financial and technical assistance and embraced a regulatory framework. In the meanwhile, St. Lucia's Minister of Trade, Dr. Keith Hunte urged the ACP States to devise proposals to put forward in the negotiations which will make significant differences to the economic future of their countries¹⁸⁴

These statements coming at a time when the all ACP-EU talks were already on the way seemingly suggested that the negotiations in phase one would be drawn out beyond the scheduled close in October, 2003. The negotiations were already moving at "snail's" pace because of the fundamental disagreements between the parties on the question of the legal framework for phase two to be agreed in phase one was very daunting. This coupled with the EU's lethargic response to ACP's demands seemed to have created a level of frustration which led the EU Commissioner for Trade Pascal Lamy to shift position and indicated the EU's willingness to commence negotiations at the regional level with any region if they were ready, even during the course of the phase one. The ACP States had exhibit some discomfort with the efficacies of the all-ACP phase,¹⁸⁵ because a great deal of time was spent talking with the EC, yet the EU had not issued their negotiating guidelines which was indeed very frustrating to the ACP States.

At the close of the all joint ACP-EU meeting, the CAFIFORUM delegation met separately with Pascal Lamy on March 1st. There, Dame Billie Miller senior Cabinet Minister of Barbados, representing the CARIFORUM States urged the EC to consider a framework agreement that would offer countries greater flexibility in assuming the obligations commensurate with their stage of development and trade interests. She also pressed the view that the region is very vulnerable due to its openness and physical

¹⁸⁴ CRNM Update No.0303, March 18, 2003.

¹⁸⁵ Ibid.

size and urged that the EPA should reinforce support for the CARICOM Single Market and Economy (CSME)¹⁸⁶. At the end of these meetings it became clear to the region that Commissioner Lamy's offer to the joint ministerial had not gone down well with the wider ACP group.

2.3 The ACP's Revised Mandate

Coming out of phase one, the ACP States agreed certain principles to guide phase two, and reiterated that issues which were of common interest at the all- ACP level would be addressed according to the all- ACP negotiating structures during the regional negotiations.

It seemed however, that in light of the fractious state of the outcome of the St. Lucia meeting, the ACP group intended to salvage the situation and try to maintain some levels of cohesion on issues of common interest as much as possible to ensure solidarity... The group agreed that even though each regional configuration was free to negotiate their own terms, any region which embarked on negotiation in areas of common interest before the specified completion deadline of phase one, must duly inform the ACP Group.¹⁸⁷

The underlying thinking at the all ACP level was to maintain cohesion and build solidarity while negotiating at the regional level. It was agreed that ACP States would co-ordinate their activities so that as the negotiation progressed the ACP States collectively would place itself in a position to say to the EC that nothing would be agreed until all is agreed across the regions.¹⁸⁸ This approach would have seemingly strengthened the hand of the ACP in the negotiations and produce a better outcome for them in terms of their demands.

¹⁸⁶ Ibid.

¹⁸⁷ ACP/27/024/03 Brussels 3rd of October 2003.

¹⁸⁸ Interview- Keith D. Knight former Minister of Foreign Affairs and Foreign Trade Jamaica. November 2008. Kingston Jamaica.

The ACP group of States however faced serious challenges in phase two which affected the outcome and quality of the regional negotiations, because of the EC's insistence on relying on the framework arrangement of the Cotonou to guide its positions in the negotiations at the all ACP level was carried over into the phase two.

In addition, both the ACP and the EC were constantly engaged in the difficult challenges posed to the EU's banana, sugar and rice regimes arising from its Common Agricultural Policy (CAP) and Single Market. These issues continued to affect the ACP's ability to strengthen their position in the negotiations, especially among the CARIFORUM region to effectively negotiate as those commodities had different protocols which were not part of the overall EPA negotiations. The sugar issues were being treated, not as issues for negotiation but more in the light of responses of the EC to the WTO pressure as a consequence of Europe's market reforms.

The ACP Council of Ministers was strident in trying to apply pressure on the EC on the question of the approach being taken with respect to ACP's banana, sugar and rice. At its 78th session in Brussels Nov.27th-28th, 2003, the ACP Council of Ministers resolved that the EC should take steps urgently to stop the deterioration of prices and to guarantee access of ACP's banana into the European Market receive remunerative prices. Further, that the EC should consult with the ACP States on the question of the pending enlargement of the community and how that would impact the ACP.

The ACP States called for the EC to adhere to the provisions of the Cotonou Agreement namely Article 36(3) under which the community was bound to guarantee that no ACP States shall be placed in a less advantageous position in the EC market. They argued that it was fundamental to the spirit of the Cotonou agreement that the EC was obligated to ensure that the level of tariff to be imposed on ACP banana as of 2006 would be such to maintain the viability of ACP banana Industry¹⁸⁹.

¹⁸⁹ ACP /25/013/03. Brussels 28 Nov. 2003.

They further argued that the EU must honour its legal obligations and political commitments under the Cotonou Agreement and that the “review” mentioned in Article 36(4) of the Agreement did not give the EU the right to renegotiate the Sugar Protocol. The ACP also made the case that the EU should desist from passing on the burden of its market reform unto the weak and most vulnerable economies of the ACP sugar and banana producing states. The ACP group vowed to carry those demands into the regional negotiations an area in which the CARIFORUM States were also very strident.

The group continued to express its dissatisfaction with the EU’s approval of the rice regime which reduced the intervention price by 50% coupled with their increase in direct aid to European rice farmers to the detriment of the ACP rice exporting countries¹⁹⁰. The ACP had intended to apply pressure to the EC to declare sugar as a sensitive product with the context of the Doha Development Round of WTO in order to strengthen the development goals of ACP sugar exporting states.¹⁹¹

This was a very challenging period for the ACP group in general, but moves so for the CARIFORUM States, of which a significant number of its Member States depended on export of banana and sugar, while Guyana remained its leading exporter of rice¹⁹².

2.4 Launch of negotiations for CARIFORUM- European(EPA)

The negotiations for the EPA at the CARIFORUM Regional level promised from the very opening to be quite difficult but the region was resolved to complete it within the agreed deadline. The negotiation for the CARIFORUM Economic Partnership Agreement was launched in Kingston, Jamaica on April 16, 2004. Trade Ministers from the fifteen CARIFORUM States were in attendance along with representative from the European Commission. The new paradigm in CARIFORUM trade diplomacy had begun to emerge as the launched was hailed as “a watershed” in the relationship between the two

¹⁹⁰ Ibid.

¹⁹¹ ACP/25/011/05.Brussels, 23 June, 2005.

¹⁹² The CARIFORUM States were more threatened by the CAP reform than any other region in the ACP configuration.

regions which bear the longest standing integration movement, and this phase of the negotiation was indicative of the new approach to North-South co-operation.¹⁹³

The formal launch was address by the Most Hon. P.J. Patterson, Prime Minister of Jamaica who used the opportunity to set the tone by which the negotiation should be developed by elaborating the historical context of the relation. He stressed the region's "long standing friendship, political cooperation, shared history and economic partnership" with Europe and further remarked that "this renewal is intended to consolidate on enduring economic relationship" with a new dimension and approach to "economic activities and trans-border transaction".

Mr. Patterson pressed the case for both sides to "mutually agreed goals and principles which will guide the design of this new phase" and that they must "recognize the fundamental differences in size, economic structure and levels of development". He urged them to accept that these negotiations envisioned "an expanded trade regime that promotes sustainable economic development in the CARIFORUM Region"¹⁹⁴.

He also outlined the Caribbean's trade strategy, policy and expectations within the context of the Doha Development Agenda and its connection with the EPA by pointing to need for the recognition of the "continuation of special and differential treatment, including preferential marketing arrangements"¹⁹⁵.

He made it very clear that "CARIFORUM Countries will continue to pursue positions which are consistent and coherent across negotiating arenas and emphasized that the

¹⁹³ Caribbean Regional Negotiating Machinery (CRNM) press release, Kingston Jamaica, April 17, 2004.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

region “will not be pressured or induced into agreeing to position at the WTO or the FTAA which is not consistent with the European Union”¹⁹⁶

In closing Mr. Patterson made an excellent pitch for the acceptance of the region’s policy on cultural diversity and its importance to development. He urged that cultural interaction is of primary importance to the people of the Caribbean and that respective countries needed to develop closer bonds of friendship and understanding through that medium. This, he argued “must be emphasized in light of the addition to the European Community of new Member States with little, if no historical ties to the Caribbean region. He pleaded for a framework by which this dimension of people’s contact would become an integral part of the objectives of the ACP-EC partnership.”¹⁹⁷ Prime Minister Patterson’s speech had resonance on both sides of the negotiating regions.

Dame Billie Miller, who had political oversight of the CARIFORUM Negotiating team also addressed the meeting and in her presentation she echoed the sentiments expressed by P.M. Patterson but rested the strength of the regions concerns on the problems associated with the escalation of security threats arguing that “security has now become the newest non-tariff trade barrier” in the global system. She urged that the EPA needed to create an architecture which reduced vulnerabilities and also facilitated sustainable development.

Mr. Paul Nielson, the European Commissioner for Development and Humanitarian Aid also addressed the opening session. He stayed closely to the European mantra carried over from the all ACP phase that the EC was not prepared to establish new funding mechanism for the EPA implementation, but that funding will be in keeping with the expressions of the Cotonou Agreement. However, he was silent regarding specific quantum of funding and urged that “Several Instruments were available to support the

¹⁹⁶ Ibid.

¹⁹⁷ Address by the Most Hon. P.J. Patterson, Prime Minister at the Launch of Negotiation for the Caribbean/EU Economic Partnership Agreement, Wednesday April 24, 2004.

preparation and implementation of the EPAs. In defending his position he pointed to the existence of the Regional Indicative Program (RIP), the National Indicative Program (NIP) and the investment facility provided for in the Cotonou Agreement¹⁹⁸.

The EU Trade Commissioner, Pascal Lamy also addressed the opening session. He seemingly warmed the hearts of his Caribbean hosts by alluding to the carnival festivities then in progress in true Caribbean spirit and expressed the view that were the parties to bring a similar spirit of enthusiasm and energy to bear upon the negotiations, then everyone would be in for an good time.

The strength of the argument he put forward, seemed to have found favour with the CARIFORUM region as he placed the EPA in the context of a process which started under Cotonou which was being extended. He argued that "...part of the Cotonou vision was also to enable ACP Countries to manage the challenges of its globalization and to adapt progressively to new conditions of intervention Trade¹⁹⁹. He enunciated the EU's position and made it clear that the he had no mandate to negotiate development finance, but made much of the fact that funding was provided for under the Cotonou agreements which would continue until 2020. He further argued that it is because "...the question of market access, including elements of reciprocity, and the degree of asymmetry' were of immediate concern²⁰⁰, why the EU in keeping with its understanding, was already investing in these areas"

In this regard however, the EU's position was not new to the Caribbean because although there were expectations that development aid would become part of the EPA implementation processes, it being the largest donor, CARIFORUM States had arrived at a policy position not to wholly rely on any single donor for their financial aid package

¹⁹⁸ Speech by Mr. Paul Nielson, European Commissioner for Development and Humanitarian Aid at the Opening of the Negotiations for the E.P.A between the CARIFORUM Sates and the EU on 16th of April 2004. Kingston Jamaica.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

primarily as a source development, but saw trade as being very crucial to development and therefore, the region had no delusion about EU funding for the EPA programs.²⁰¹

The EU Trade Commissioner however, seemingly hit the high point of EU's trade strategy in the region by placing it in the context of four fundamental principles. He explained that firstly, for Europe the EPA negotiations were geared to take its special relationship with the region to another level in the context of the global economy. Secondly, that Europe is developing a new relationship in the Western Hemisphere as a whole and the Caribbean States must have a special place within that relationship. Thirdly, that the negotiation is important in sending a signal that the enlargement of the EU will not weaken the long standing support that is given to the Caribbean region as part of the ACP Group and, fourthly, what happened under Cotonou was not fundamentally different from what had been going on elsewhere including the EU's relations with Central or Latin America. Europe was therefore developing a global approach to trade and development with all developing countries. He pointed to the fact that the EU is bilaterally supporting "regional integration and the building up of markets in order to harness the process of globalization".²⁰² The CARICORUM States appreciated fully well that EPA negotiations were about free trade; quite different from the old Lomé type arrangements and the special relations with the EU was quite moot.

After the Launch, the principal negotiator of the CARIFORUM remarked that negotiations represented a significant juncture in the continuing North-South relations and predicted that result would place the region directly in the globalization process²⁰³. A CARIFORUM Ministerial with Commissioner Pascal Lamy follow; also a special meeting of the CARICOM Council for Trade and Economic Development (COTED) was held.

²⁰¹ Interview- Sam Chandler permanent Secretary Ministry of Foreign Affairs and Foreign Trade, Barbados, June 10, 2009. Bridgetown, Barbados.

²⁰² Speech by Pascal Lamy EU Trade Commissioner. Opening of the negotiations for the Economic Partnership Agreement (EPA) between the Caribbean Forum of ACP States (CARIFORUM) and the European Union on 16th of April 2004. (Kingston Jamaica).

²⁰³ RNM update 0406. April 20 2004.

The CARIFORUM's strength in the negotiations rested heavily on the level and quality of its preparedness for the negotiations. How the CARIFORUM States prepared themselves to meet the Europeans was therefore important to the outcome of the negotiation in terms of Caribbean successes in trade diplomacy. The parties agreed a structure and the schedule of the negotiations²⁰⁴.

2.5 Competences, Legitimacy and Preparedness

The CARIFORUM region had to overcome several hurdles in order to mount a successful preparation and actual negotiations for the EPA. Firstly, there was the regional configuration of countries which had to negotiate as one group but, indeed within the group there were different logistic, legal and economic issues in terms of its competences and actual coordination of the preparatory initiatives and the conduct of the negotiation. The internal political dynamics of the regional institutions came into sharp focus during the preparatory phase and throughout the entire negotiations.

2.5.1 Competences

There were three processes connected with the issues of competences within the CARIFORUM negotiations and its structures, which had to be carefully addressed at each negotiating step.

There is the Caribbean Community and Common Market (CARICOM) which were established by the Treaty of Chaguaramas; within CARICOM there is the Organization of Eastern Caribbean States (OECS) a sub-regional grouping of States created in 1981 which included all the Member States of the Eastern Caribbean some of which are still

²⁰⁴ The negotiation proceeded in four phases. First phase April to September 2004 to establish the EPA negotiating priorities on both sides. Phase two September 2004 to September 2005 to identify the requirements for bolstering Cariforum regional integration. The third phase September 2005 to December 2006 for consolidating the various discussions and work towards a first draft of EPA document. The final phase from January 2007 to December 2007 contracted on finalizing areas of the negotiations.

protectorates of Britain²⁰⁵. There is also the Caribbean Single Market and Economy (CSME) of which all the CARICOM Member States except the Bahamas are signatories. Superimposed upon this configuration is the CARIFORUM Group of States which includes the Dominican Republic and Cuba, even though Cuba did not participate in the EPA negotiations the Dominican Republic was a key participant.

The CARICOM Secretariat which is the administrative arm of CARICOM did not play any substantive role in the negotiation because it had no competence. However the Caribbean Regional Negotiating Machinery (CRNM) established in 1998 had the responsibility to coordinate the CARIFORUM EPA Negotiation²⁰⁶.

To establish competency the region had to align the negotiating structures outside of the CARICOM's formal institutions both in terms of developing the negotiating mandate the negotiating processes themselves. This involved two dimensions: Firstly, the CARIFORUM process and secondly, the actual negotiating process. Within the CARIFORUM there existed three levels of negotiation taking place simultaneously. There was the CARICOM process, the OECS process and finally, the CSME process.

Furthermore, while the CARICOM Secretariat which is the principal administrative arm of the institution was not directly involved in the negotiation, the CRNM which was not a CARICOM institution under the Treaty of Chaguaramas had a coordinating role in the management of the negotiations for the EPA. The head of the CRNM was the principal negotiator and the organisation also provided resource persons to guide the process and conducted research to inform policy and negotiating positions. This created a

²⁰⁵ Anguilla, Antigua and Barbuda, British Virgin Island, Dominica, Grenada, Montserrat, St. Lucia, St. Kitts and Nevis and St. Vincent. Politically Independent member as a group exhibits levels of integration include monetary Union, and a common Judiciary with a Secretariat to oversees its external Relations and Internal process.

²⁰⁶ The Caribbean Regional Negotiating Machinery (CRNM) was set up in 1998 by regional Heads principally to spearhead external trade negotiations particularly the Free Trade Areas of the Americas (FTAA) which has been stalled since US President Bill Clinton demitted office, 2004. The CRNM was not then have any status as a regional institution under the Revised Treaty of Chaguaramas, but it had its existence based on policy decisions. In 2009, the CRNM was transferred to the CARICOM Secretariat with a name change. It is now the Office of Trade Negotiations and it is located in Bridgetown Barbados.

problem which simmered during the negotiation of the EPA, but surfaced most unexpectedly after the agreement was initialled²⁰⁷. The competence to negotiate external agreements rested with no single body as obtained in the EU. The CARIFORUM processes therefore gave rise to a uniqueness which provided for flexibility in some respects, but forced a rigid compliance with the region's mandate²⁰⁸.

The process of developing the region's negotiating mandate was elaborate and it informs the structure and positions taken within the negotiations in a two way flow of exchanges from bottom up and then from top to bottom. The competence therefore resided in each Member State of the group which participated in the process and through the Conference of the Heads of Government of CARICOM of which the Dominican Republic was not a Member State and therefore could not participate in the decision making processes. But it was invited to meetings in an observer status.

2.5.2. Legitimacy

The Negotiation process was influenced in a large part by the structures established under the Cotonou Agreement which envisaged the involvement of a wide cross-section of players in each region. This process was designed to give ownership of the EPA to each region and it should reflect the regional priorities. The legitimacy of the CARIFORUM EPA was therefore very crucial in establishing both the mandate and the actual outcome of the negotiations. The acceptance by the region of the negotiated outcome was therefore very important in the philosophical thinking underlying the establishment of the regime. The CARIFORUM States set about establishing legitimacy by having all sectors of the society participated in the development of the mandate and to a large extent some institutions were allowed into the various negotiating sessions²⁰⁹.

²⁰⁷ There were several calls for the revamping of the CRNM. Calls emanated from regional Academicians, labour, Media, NGO, and opposition politicians.

²⁰⁸ Interview- Henry Gill CRNM, June 10, 2009, Barbados.

²⁰⁹ Ibid.

2.5.3 Pre-negotiation preparations

The Caribbean Regional Negotiation Machinery (CRNM) had primary responsibilities to coordinate the negotiation and develop the CARIFORUM mandate. In executing its mandate, the CRNM held several meeting and consultations at various levels across the region and also embarked upon research and studies to guide and inform the process. Consultations were held in all the Member State of the CARIFORUM Group with various stake holders. These included technical working groups which were comprised of officials of regional governments, regional Institutions, academia, private sector organizations, NGOs and labour. The process was also supported by specialized international Institutions such as Commonwealth Secretariat, WTO, Inter American Development Bank (IADB) and the World Bank.²¹⁰

The process at the local level was quite elaborate as the ministry in charge of trade in each Member State spearheaded the process of consultation by establishing Technical Coordinating Committees (TCCs). The positions developed through the consultative processes were carried forward for further development and analysis by specialists on agriculture, market access, services, investment, trade related services, trade facilitation, legal and institutional issues. The technical working groups (TWG) prepared proposals under various subject areas and made recommendations which were then forwarded to the Council of Trade and Economic Development (COTED). Their decisions were forwarded to the Heads of CARICOM for final approval and instructions.

The Caribbean ministers with portfolio for trade met in Barbados on the 3rd of May 2003 and considered proposals and recommendations to define the regional negotiating positions. The draft negotiating guidelines prepared by the CRNM was approved by COTED which took the following decision that:

²¹⁰ Bernal, Richard L. "Globalization: Everything But Arms; The EPA and Economic Development" Grace Kennedy Foundation lecture 2008. Grace Kennedy Foundation, 73 Harbour Street, Kingston, Jamaica W.I.

- 1) the EPA must promote sustainable development in keeping with the development strategy of each Member State and,
- 2) the EPA was between two highly unequal regions and must therefore be accomplished through special accommodation for the least developed countries in the region.

The Director- General of the CRNM argued for the acceleration of the region's preparedness for the negotiations and emphasized the need for the region's skilled and unskilled persons to be able to enter the EU as suppliers of service under the EPA.²¹¹ At the special meeting of the CARICOM Council for Trade and Economic Development (COTED) on external negotiations held on the 16th of April, which was preceded by a meeting of the CARIFORUM Countries at the senior official level which fine tuned the regions negotiating position, COTED endorsed the proposal for the negotiations to be conducted in three levels and also the structure of the Negotiations.²¹²

The CARIFORUM Ambassadors in Brussels were very integral to the process and the regional team in Brussels was headed by Ambassador Errol Humphrey of Barbados who was the Vice Dean of the CARIFORUM's College of Negotiators. The college of lead and alternate Negotiators was in charge of executing the negotiations in specific areas. The college was comprised of experts in the various negotiating subject areas and it took instructions from the mandates approved by the CARIFORUM Heads of Government.. The CRNM attended a meeting of the Common Market for Eastern and Southern Africa (COMESA) between the 22 -29 May, 2003 in Nairobi, Kenya and also gave advice and consultation to the African various other African configurations of States. The CARIFORUM States benefited from these as the meetings also served as

²¹¹ CRNM update 0307, May 5, 2003.

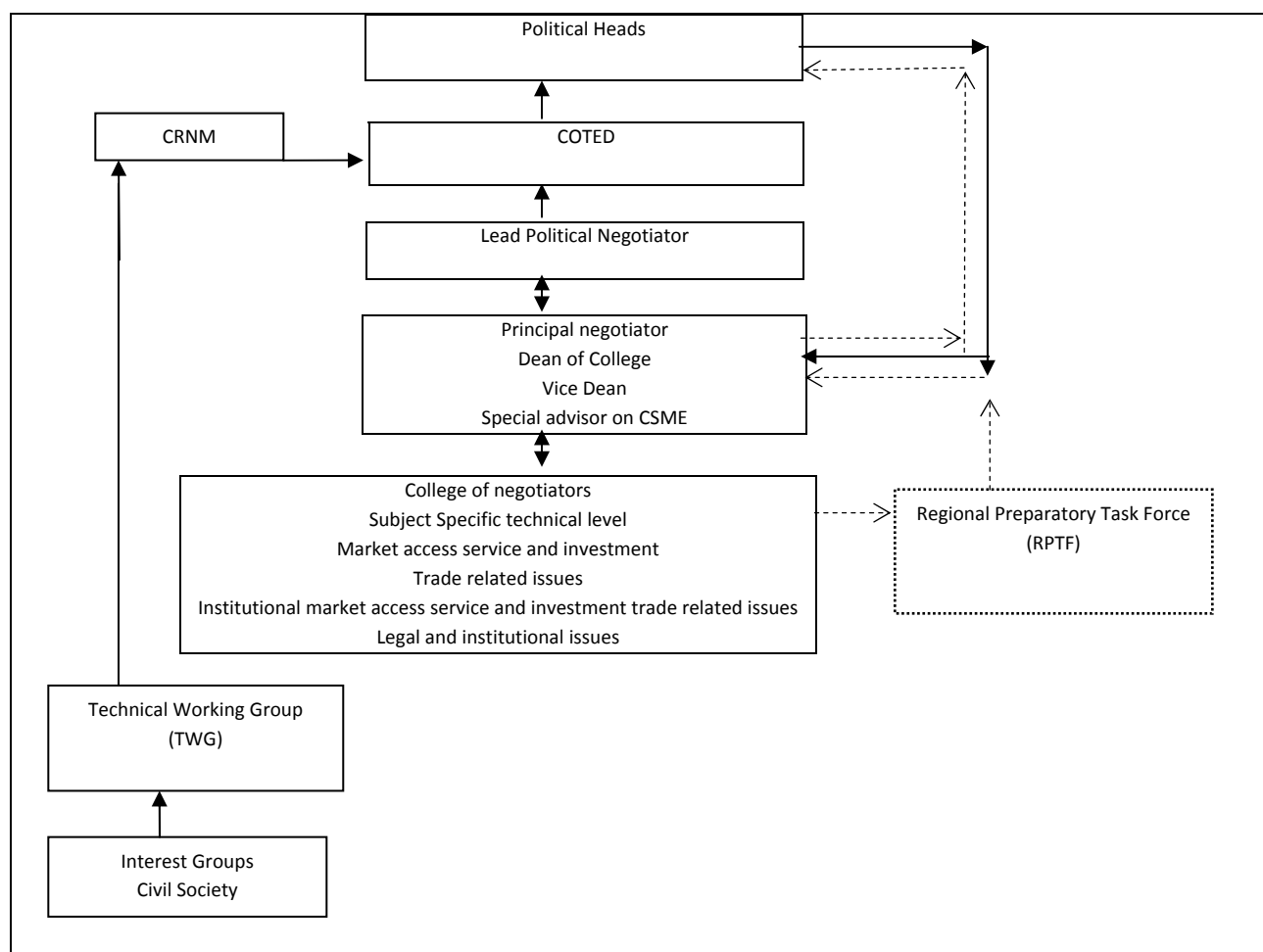
²¹² The negotiation was conducted in four phases. The initial phase lasted from April 2004- September 2004 and covered the priorities of the EPA Negotiations, the main concerns and interest. The second phase ran from September 2004-September 2005 dealt with the strategic approach to CARIFORUM Regional Integration. The third phase September 2005 –December 2006 dealt with the structuring and consolidation Negotiations to arrive at a draft Agreement and the final phase ran from January 2007-December 2007 and dealt with the finalization and consolidation of the Agreement.

preparatory initiatives for its own regional negotiation. So that by the time CARIFORUM EPA negotiations had commenced, the region was ready. The CRNM in its coordinating role had to interact with the stakeholders of all levels. But more so, it dealt primarily with ministers of trade, within the COTED framework and also various ministers in the region and at the official's level. The configuration of the meeting at the ministerial level posed a specific challenge because the Dominican Republic had not been part of the COTED, but the Dominican Republic was regularly invited to the COTED meeting specifically to address matters affecting their interests. A special COTED was established to include the Dominican Republic.

The structure of the negotiation included civil society, business interests and officials up to the Heads of Government which provided overall directions and signed off on all decisions²¹³

²¹³ The Heads of Government was of the Apex. Lead ministerial spokes person, former minister of Barbados, Dome Antoinette (Billie) Miller was appointed to take charge of the process at the ministerial level. CARICOM Council of Trade and Economic Development (COTED) was in charge of making recommendation, approved strategies and take positions and provided overall guidance to process and approach to the negotiations. Principal negotiator and dean of the college of negotiations was the Director- General of the Caribbean Regional Negotiating Machinery (CRNM), Ambassador Richard Bernal of Jamaica was ask to meet at the principal negotiators level to dial with issues which could not be agreed at the technical negotiating level. There was the college of negotiators who negotiated the text of the Agreement, Four Technical Group dealing with market access, services and Investment, Trade related issues (TRI), Legal and Institutional issues which involved both sides negotiating texts for the various chapters of the Agreement, and the Technical Working Group which dealt with development of Regional position through consultations at the local and Regional levels. There was also Caribbean Non- State Actors (NSA) which existed to strengthen dialogue and participation with Regional civil society stakeholders.

Table 4: Structure of CARIFORUM-EPA Negotiations



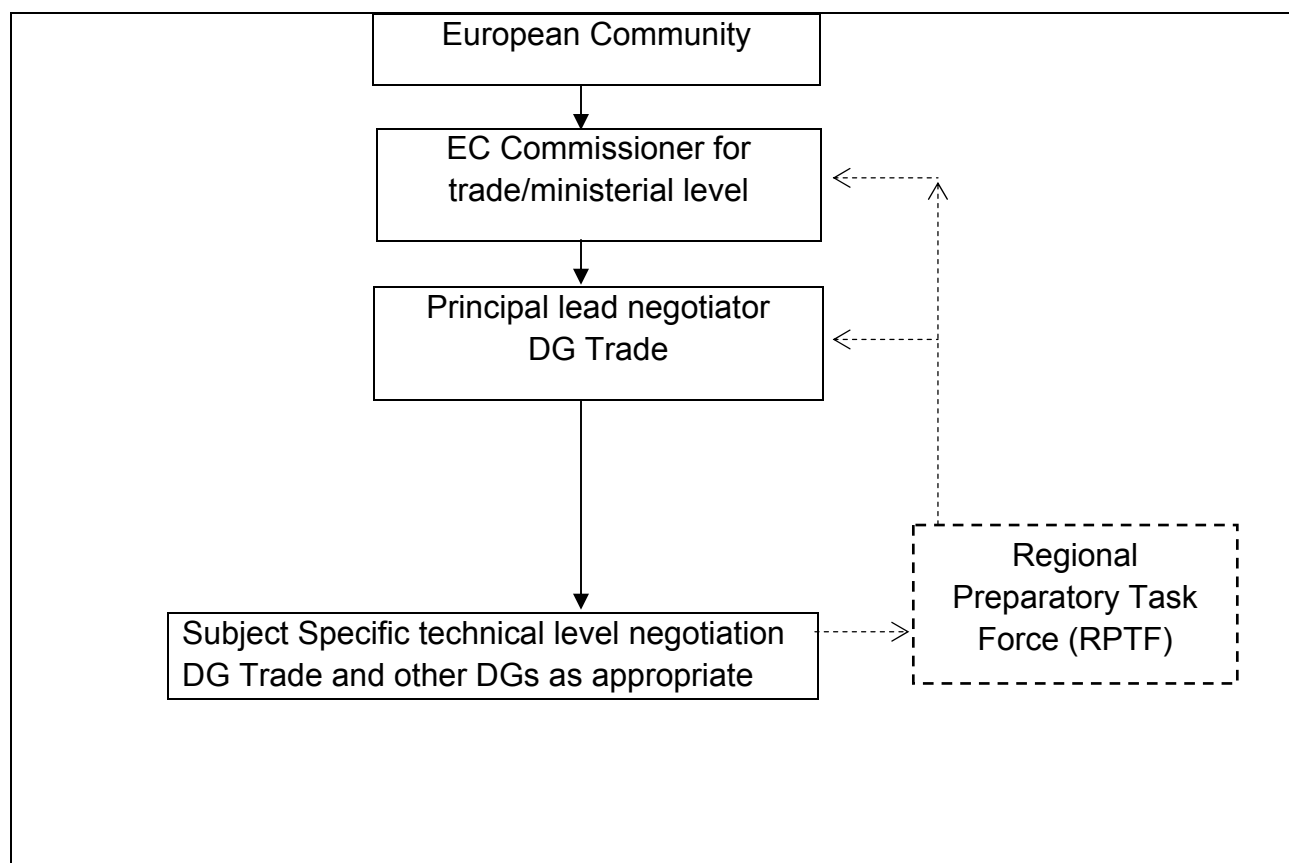
Source: Researcher's analysis of Data from www.crn.org. Joint statement of the 17th meeting of CARIFORUM-EU Principal Negotiators March 28, 2006

Note: (1) the technical negotiating Groups (TWGs) consisted of representatives from Gov. NGO & Businesses on 4 subjects: market access including Agriculture Service and Investment Trade Related Issues and (4) legal and Institutional Issues.

(2) The RPTF served as strategic links between EPA negotiations and Development Corporation, translating needs for support identified during negotiation to operational ideas for trade-related and other development assistance.

The structure of the EC Negotiating mechanism and procedures were determined by the Treaty establishing the European Community. The European Commission negotiated on behalf of the EC which was represented by the Commissioner for Trade at the Ministerial level along with Officials of DG Trade at the Principal Negotiators level. Negotiations at the technical level were coordinated by DG Trade along with other DGs as appropriate.

Table 5: Structure of EC-EPA Negotiations



Source: European Commission Director- General for Trade Brussels, 22 April 2004.

Note: (1) Regional Proprietary Task Force (RPTF) is not a formal part of the negotiation.

(2) The Regional Preparatory Task Force (RPTF) was not a formal entity in the negotiation, was mandated under Articles, 1, 18, 20 and 35 of the Cotonou Agreement.

2.6 The CARIFORUM's Negotiating Mandate

The development of the CARIFORUM Negotiating mandate having gone through the various tiers of the consultative processes was presented in draft form to the CARIFORUM meeting of Trade Ministers with recommendations. The mandate was followed closely to the all ACP mandate but with its own regional specificity was approved by the Heads of CARICOM. The task of coordinating the regional negotiation agenda posed specific. Firstly, there had to be agreement at the local level among stakeholders and subsequently at the regional level as each state had its own agenda and concerns which had to be translated into the regional agenda for negotiation at the international level. This process proved to be the most difficult challenge for the CRNM and it took considerable investment in time at all levels.²¹⁴

Shortly after the launch in April 2004, the Caribbean Negotiating Machinery with support from the Commonwealth Secretariat convened a meeting of trade experts on the 7-11 of June 2004 in St. Kitts. The purpose of the meeting was to review the negotiating mandate and to develop a revised text. It considered the scope of the negotiations and the regions offensive and defensive strategies in the areas of agriculture, market access, investment, services and trade related issues. The meeting also examined measures to strengthen the integration process and to align national and regional development policies. The recommendations of the expert group went to the meeting of the Technical Working Group held later in June in Trinidad and Tobago for refinement. These were then approved by the Special CARICOM Council of Trade and Economic Development (COTED) on the 2nd of July in Grenada.

The recommendations of COTED was approved at the twenty-fifth meeting of the CARCOM Heads of Government in July 4-7, 2004. The Heads welcomed the launch of the EPA and gave its instructions and commitment to coordination with the wider ACP Group while continuing to press its cause at the WTO and build consensus amongst the

²¹⁴ Interview- Henry Gill, CRNM, Barbados. June 10, 2009.

G 90²¹⁵. This broad based approach adopted by the CARIFORUM States was designed to place the region at the center of the global thrust to impact the process at the multilateral level while negotiating its free trade agreement with Europe.

The mandate to negotiate the EPA was now in place and the regional negotiators had begun to focus their energy on obtaining a favourable deal for the CARIFORUM States in the EPA negotiations. The approach and strategy of the CARIFORUM States was multi-pronged and three-tiered. Because, while negotiating at the regional level, consultations were taking place at the national level, also in Brussels and Geneva. The regional negotiators had a carte Blanche mandate, which facilitated the late inclusion of cultural services came at the insistence of Prime Minister Owen Arthur of Barbados. His demand was strenuously opposed by Germany and the Netherlands. However, the Barbadian Prime Minister made the demand a *quid pro quo* for there to be an agreement and argued that the demand was very vital to the entertainment industry in the region²¹⁶. Therefore, even though the EU's mandate did not expressly included it, the subject was left open for decision²¹⁷ and the EC conceded to that demand.

2.6.1 Divergences on issues for negotiations

In June 2002, the General Affairs and External Relations Council of the EU gave the commission a mandate to negotiate an EPA. That mandate guided the Commission throughout all the phase of the negotiations without variation, but it allowed discretion.

The Commission held the view that even though the EPA's was being negotiated on a region to region basis, it was important to maintain the objective of the ACP-EU Cooperation and the *Aquis* of the ACP²¹⁸. It emphasised that EPAs should be as similar as possible depending on the specific needs of each region. The EU made it quite clear

²¹⁵ Press release 115/2004. July 8, 2004. Communiqué issued the conclusion of the Twenty- Fifth meeting of the Conference of Heads of Government of the Caribbean Community, 4-7 July, St. Georges, Grenada.

²¹⁶ Interview- Henry Gill, June 10, Barbados & Sam chandler June 10, Barbados.

²¹⁷ Council of the European Union X44X/02 DGEII, Brussels, 30th of April 2002.

²¹⁸ ACP-EC/WG/LI/MN/21. Joint Report on the 1st meeting on the specialised group on legal issues. Brussels, 6May2003.

that the negotiations must achieve WTO compatibility under Article XXIV of GATT, but stressed a case by case analysis of a region's specificity and noted the speed at which adjustments should take place must depend on the intensity of the integration in that particular configuration of ACP States, and also the degree of cohesion within the group.²¹⁹ So, by the time the CARIFORUM States started their negotiations they were aware of what the EU wanted to achieve. There was, however a clear divide between the ACP States and EU on the question of:

- 1) The Interpretation of WTO Compatibility.
- 2) The EU's interests in including the so called "Singapore Issues" a part of the new trade arrangements and
- 3) The degree of reciprocity and special and differential treatment under the provision of Article XXIV of GATT.

From the CARIFORUM's perspective, the basic thrust of the negotiations was how to fashion the EPA to achieve development objective and still satisfy the requirements for W.T.O compatibility. So, from the very onset, the EU wanted to have trade liberalized as high as 90% of "all trade" to include trade in services. However, notwithstanding that the ACP States along with other developing countries had rejected the inclusion of the "Singapore Issues", in the WTO rule based system, both in Seattle and Cancun, the EU, Japan and the USA continued pressing for their inclusion. The EU seized the opportunity to advance its global trade agenda through these negotiations as the EPAs seemed to have offered them the best platform to push its agenda. The multilateral talks were stalled for a protracted period. The EU wanted to negotiate region to region as it would be too difficult to negotiate with the all ACP as one unit, even more so, because the group had already resisted the inclusion of the Singapore Issues at the WTO and in the EPA at the all ACP negotiation.²²⁰ The CARIFORUM Group of ACP States wanted

²¹⁹ Commission of the European communities SEC (2002) 351 Final. Brussels April 9, 2002.

²²⁰ ACP/61/056/02. ACP secretariat Brussels (2002). See also ACP. EU Negotiations for Economic Partnership Agreements. Areas of Convergence and Divergence ACP/61/113/03 Rev.1, ACP secretariat,

however, to include services in their EPA.²²¹ Because for them, services represented the only area in which they had some trade advantages. Therefore, their strategy was designed to achieve two primary trade objectives. Firstly, in light of the decline in its export of manufactured goods and agricultural products to the EU and the uncertainties regarding the future of banana and sugar, coupled with the importance of tourism and other services industries emerging in the region, including entertainment in addition to the need to attract more Foreign Direct Investment (FDI), it was in the region's best interest to negotiate the services sector with the EU. Secondly, the region knew that the EU wanted to open up the service sector to competition more so, to tap into the very lucrative area of public procurement and therefore the region felt that in agreeing to negotiate those issues it could leverage and secure more concession from Europe. Indeed, the CARIFORUM-EU EPA was the only one from the six configurations which was prepared to negotiate the 'Singapore Issues' and that made them the central focus of the EU's strategy in the EPA negotiations, which the CARIFORUM States later used offensively to leverage concessions.

The continuing problems of banana and sugar were always of grave concern to the CARIFORUM States. The EU was undergoing its market reforms and the adjustments to the Common Agricultural Policy (CAP) and so, the region received its first major setback in their negotiations, within months of its launch, when it information surfaced that the EC was about to review the mechanism for implementing the ACP Sugar Protocol in the European Union (EU) sugar regime. Realising the potential impact on Caribbean economies, the fourth summit of the Heads of State of ACP countries meeting on the 23rd-24th of June, 2004 in Maputo, Mozambique called upon the EU to respect the legal and political undertakings enshrined in the ACP Sugar Protocol and argued that by virtue of Article 36(4) of the Cotonou Agreement the EU was bound to ensure that under

Brussels (2003).

²²¹ Interview -Sam Chandler, Barbados June 16, 2009. Interview Henry Gill CRNM, Barbados June 10, 2009. See also DR. Richard Bernal, Grace Kennedy Foundation lecture 2008. Kingston Jamaica.

European Agricultural Guidance and Guarantee Fund (EAGGF), the future EC sugar regime the ACP sugar supplying states were guaranteed the same level of export earnings as provided to the EU sugar producers. But, this was not to be as the EU ignored those calls and proceeded to cut the ACP sugar prices without any reference, consultation or hearing from the ACP State. The EU's decision set in motion a period of continuous strain on the relationship of the CARIFORUM States as the negotiations continued. Indeed, sugar and banana were not being negotiated as part of the EPA because they were governed by different commodity protocols²²². The ACP States called for dialogue and consultation on the issue of sugar, but the EU made no response directly, but by the 9th of July 2004, the EC announced its new General System of Preference (GSP) and the companion principles to guide the regime through to the year of 2015, commencing on the first of January 2006. The EU's proposals to re-organize its sugar regime which was tabled on the 24th of July 2004 was severely criticised by the Twenty-Fifth meeting of the Heads of Government Conference of CARICOM held in Grenada. The Heads characterized the EU's proposal as a "betrayal of the commitments and guarantees given by the EC at the time of negotiating the Sugar protocol" in 1975. The Heads contended that the projected losses to the region due to the EU's action would outstrip the proposed compensation package by well over 150% and it called upon the EU and European Commission to withdraw the proposal and to consider the interest of the ACP sugar exporting countries in the region regime. The Caribbean States expressed condemnation of the EU's conduct and stressed the ungratefulness of the EU, arguing that in 1975 when Europe was desperate for the supplies of sugar for their factories and industries to be guaranteed they turned to the Caribbean and Pacific States, particularly for such guarantees and the former colonies obliged and now the EU has turned its back against these States²²³. So, potentially devastating was the EU's proposal on the export earnings of the CARIFORUM States that St. Kitts which had been producing sugar for European markets for well over three

²²² ACP/28/010/04 Final Maputo Declaration.

²²³ Interview- Sir Shirdath Ramphal, June 9, 2009. Bridgetown, Barbados. ???

centuries announced the closure of its sugar industry and the quota allotted to it under the protocol was re-allocated and distributed among the other CARIFORUM sugar exporting States.

2.6.2 The first meeting of Principal Negotiators

Negotiations for the CARIFORUM-EC EPA were launched in Jamaica on the 16th September, 2004 and it was scheduled to close in December 2007. The process was to be conducted in four phases²²⁴.

Table 6: Schedule for CARIFORUM- EPA Negotiations

Dates	Negotiation	Review
Phase I April 2004-Sept. 2004	Establishing the Priorities of EPA	Meeting of Principal negotiators
Phase II Sept. 2004-Sept. 2005	Convergence on strategic approach to CARIFORUM Regional Integration	Meeting of principal negotiators
Phase III Sept. 2005-Dec. 2006	Structuring and consolidating of EPA Negotiations	Meeting of principal negotiators
Final Phase Jan. 2007-Dec. 2007	Finalization	Meeting of principal negotiators. December 16, 2007. Agreement to be initialled.

Source: Researcher's analysis of Data from CRNM. www.crnrm.org

²²⁴ The negotiation proceeded in four phases. First phase April to September 2004 to establish the EPA negotiating priorities on both sides. Phase two September 2004 to September 2005 to identify the requirements for bolstering Cariforum regional integration. The third phase September 2005 to December 2006 for consolidating the various discussions and work towards a first draft of EPA document. The final phase from January 2007 to December 2007 concentrated on finalizing all areas of the negotiations. Note: The initialling of the agreement signalled the end of the negotiations, not that the agreement was ready for signing by the various parties because changes could be made before its signing.

The CARIFORUM's principal negotiator had his first official meeting with his EU counterpart in 2004, shortly after the announcement of the new proposals for the sugar regime. They discussed the scope and priorities of the negotiations and exchanged views on the wider vision of the EPA and agreed on the objectives to strengthen CARIFORUM regional integration and that the main purpose of the integration initiatives was not to promote liberalization of trade and the opening up of the region's market to Europe. They also had convergence in principle on the question of Special and Differential Treatment (SDT) for small Caribbean economies, but the EC was non committal on the question of the CARIFORUM States' requests for SDT commitments to go beyond what was agreed at WTO.

The EU's proposals for changes to the sugar regime was of concern to the Caribbean negotiator who pressed the Europeans to get an agreement to use the EPA as an instrument to address the negative effect of the EU's policy changes under the Common Agricultural Policy (CAP) on the Caribbean export of banana, sugar and rice.

The CARIFORUM States were very firm in holding to the view that development assistance is a vital link between trade liberalization and development strategies. Both sides agreed that the establishment of the Regional Preparatory Task Force (RPTF) comprising of development expert from either side would better address those issues. They also agreed the modalities to guide the operations of the RPTF.

The EC seemed well aware of the position taken by CARICOM Heads at their Twenty-Fifth conference held earlier in July, 2002 which mandated a meeting of CARICOM Stakeholders to review the EU's proposals for changes in its sugar regime and to agree a collective response. The CARIFORUM negotiators had to bear in mind that the outcome of those deliberations at the stakeholders' level would have some impact on the directions of the negotiations on the question of market access and agriculture. Therefore, from the very early stages of its preparatory work, the CRNM had to be proactive in coordinating the various aspects of the negotiating processes.

The CARIFORUM stakeholders meetings were scheduled for September 28-29th. So, the Caribbean Regional Negotiating Machinery (CRNM) promoted a national

consultation on EPA in St. Vincent and the Grenadines for the 15th of September which would precede the meeting of its Technical Working Group scheduled for October 11-12th in the Dominican Republic. The stakeholders meeting rejected the EU's proposal. The region acknowledged that the issues of agriculture and commodity protocols were very integral to CARIFORUM's sustainable development and therefore, were inextricably linked to Caribbean Integration and sustainability. Of necessity, both issues had to be tackled as companion matters.

A meeting of CARIFORUM's Technical Working Group (TWG) was held in the Dominican Republic to define the scope and priorities of the regional integration process prior to the convening of the fifth meeting of the Joint ACP-EU Ministerial Trade Committee (MTC) in Brussels on the 26th of October 2004. The issues raised by the CARIFORUM Technical Working Group were also raised at that level and the ACP argued for infrastructural support for the development of the regional integration process across the entire ACP regions. So, the ACP made their position clear that regional integration must go beyond the mere creation of regional markets ostensibly for EU's penetration through trade liberalization. This therefore represented a dual push by the ACP States as part of their overall strategy at both the all ACP and regional levels.

The ACP as a group and the CARIFORUM States in particular knew from their own experience that the EU's strategy and broad objective in trade negotiations were to create market access by opening up market of its trading partners and therefore, notwithstanding the EU's earlier concessions under the Lomé' and Cotonou Agreements on the question of non-reciprocity in favour of the ACP States, it had always exhibited a preference for reciprocity in market access²²⁵. The Caribbean conceded on the need for reciprocity, but pressed for sustainable adjustments and time.

CARIFORUM's offensive strategy in negotiating the scope and defining their regional Integration process was to link trade policy to development policy and stress that trade

²²⁵ Interview- P. J. Patterson, March 3, 2009. Kingston Jamaica.

is a very pivotal issue for development and not aid support.²²⁶ It argued that regional integration is about development of which trade is a very important component and pointed to the achievements of the EU as the most enduring and successful Integration movement, and further made the case that the Caribbean had embarked on its own integration movement since the 1960's following the EU's model as it envisioned economic development for itself. The Caribbean was of the view that its integration process must benefit from the EPA processes and was determined to hold the EU to its commitment to regional integration stated in mandate and the Cotonou Agreement.

The region therefore resisted the EU's demand for it to become a custom union under the EPA and argued that under the Cotonou Agreement and by virtue of the EU's own mandate, each region must be allowed to negotiate an EPA, consistent with its level of integration and its own development needs. This line of argument proved insurmountable as the Caribbean impressed the EU to make concessions on their demands for CARICOM to become a custom union. The EU had hoped that with the introduction of a custom union, it would have achieved a major breakthrough in opening up the market of the region to meet the WTO's objective of liberalizing substantially "all trade" to the accepted level of 90% or above and to include trade in service as an integral part of that regime. But, the CARIFORUM States were resolute that the custom union approach to trade was not in their best interests and successfully argued that it would undermine the basic tenets of the Treaty of Chaguaramas establishing the Caribbean Community.

The Caribbean has to vigorously defend the peculiar characteristics of its own integration process, by making much of the fact that in as much as Dominican Republic was negotiation as part of the CARICOM Institutions, it was not part of CARICOM and further, that CARICOM was in the process of developing its Single Market Institution with the vision of creating a single economic space in the future.

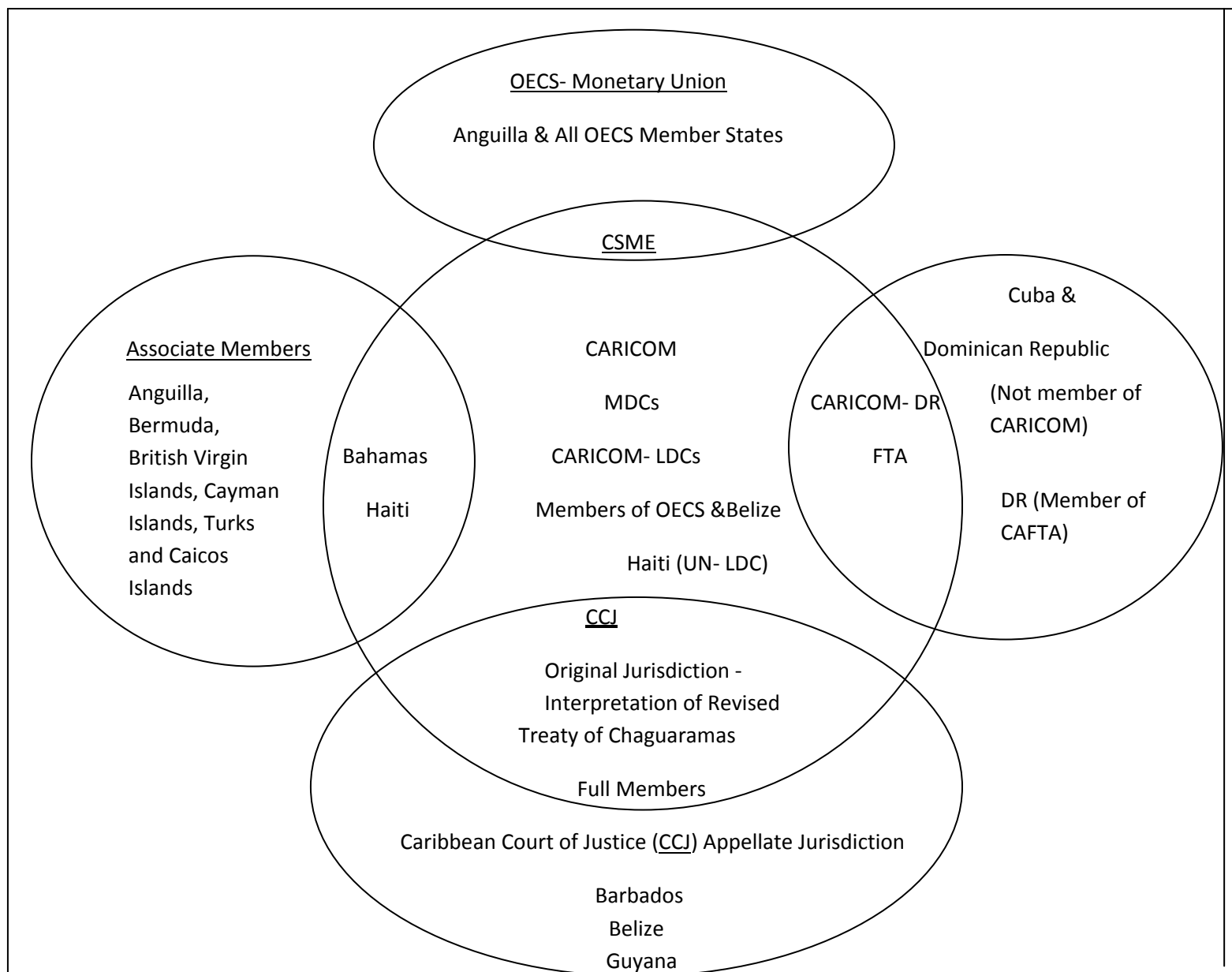
²²⁶ Interview- Sam Chandler, Bridgetown, Barbados. June 16, 2009.

In this regard there existed other variables, for example, the OECS which under the Revised Treaty of Chaguaramas are designated as Least Developed Countries (LDCs), CARICOM-Dominican Republic free Trade Agreement signed in 1998 which was not yet implemented and that the Bahamas was not a Member State of the CSME although being a Member State of CARICOM. These issues created a “variable geometry” quite unique to this region and a factor which was employed defensively and offensively by the CARIFORUM States during the negotiating processes to achieve its principal objectives in light of the asymmetries between the negotiating parties²²⁷.

The Caribbean kept themselves constantly informed as to what was happening in the EU which caused them to be better prepared. For example, the region recognised why Europe wanted to advance a Custom Union approach to the EPA. But Europe had disguised their real motive, arguing instead, the success of EU itself as a measure to advance its position. However, the Caribbean felt that the EU wanted the Custom Union approach to integration because it favoured them, because the Custom Union would remove the internal trade arrangements which the region had developed since 1968 and would allow the EU to have access to all the markets of each country as the economic arrangements would be seamless. The CARIFORUM States rejected that demand.

²²⁷ Interview - Henry Gill, CRNM, June 10, 2009, Bridgetown, Barbados.

Table 7: The Variable Geometry of CARIFORUM States



Configuration of CARIFORUM's (Variable Geometry configuration)

Source: Researchers analysis of Data: www.cnm.org/ http://ctrc.sice.oas.org/trc/Articles/CARICOM_Report_2.pdf downloaded, February 12, 2009. Key: CARICOM: MDCs Bahamas, Barbados, Guyana, Jamaica, Surinam, and Trinidad and Tobago. CARICOM LDCs: Antigua and Barbuda, Belize, Dominica, Grenada, (Haiti –UN), St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines. (British Virgin Islands are not Members of the OECS Monetary Union)

Note 1: Bahamas & Haiti are a Member States of CARICOM/CARIFORUM, but not Members of the CSME. Only Barbados, Belize and Guyana are Full Members of the Caribbean Court of Justice (CCJ).

Note 2: The Dominican Republic (DR) is a Member of CARIFORUM, but not CARICOM. It has a FTA with CARICOM & is a signatory State to the Central American Free Trade Agreement (CAFTA) which does not include CARICOM Member States.

Note 3: Haiti is the only UN LDC in the region and all the OECS & Belize are Regional LDCs. Cuba, however was not part of EPA

2.6.3 The November, 2004 meeting of the negotiators in Barbados

By the time the senior negotiators on both sides met in Barbados on the 12th of November 2004, the Caribbean position on the question on regional integration was well established. That meeting made significant and early progress in the areas of regional Integration and the schedule of the EPA negotiations. Good progress was also made on the modalities and work of the joint Regional Preparatory Task Force (RPTF).

Recognising the value of the integration processes in the region regarding the future of the EPA, both sides agreed a framework to deal with CARIFORUM regional integration and cooperation with special emphasis on the CARICOM Single Market and Economy (CSME) and the deeper involvement of Haiti along with the CARICOM- Dominican Republic Free trade agreement. The question of the institutional framework and capacities to effectively deal with consequential adjustments were also agreed.

The significance of this meeting is that it served to clarify some fundamental misunderstanding and perceptions on the part of the EU as pointed out by Karl Falkenberg the lead negotiator for the EC team who in expressing his appreciation of having a better understanding of the CARIFORUM integration and suggested that this was a ‘good starting point for the negotiation of the EPA to support integration and development in the region’²²⁸. The EC therefore had to confront and come to terms with CARIFORUM’s desire not to pursue a course of integration via custom union. The EC wanted a custom union arrangement because it would remove the internal trade arrangements which the CARICOM States had developed for themselves since 1968 and therefore allowed the EU access to all the markets of the region because the internal market would be seamless.

The meeting agreed on a framework to address CARIFORUM regional integration and co-operation with emphasis on the CARICOM Single Market and Economy (CSME), the further integration of Haiti into CARICOM, the CARICOM-Dominican Republic Free

²²⁸ CRNM Update 0418, November 16, 2004.

Trade Agreement and also on institutional framework and capacities to address the adjustment issues of the region. The region held to their defensive strategy on the question of the regional integration processes and the impact of the EPA upon those.

Ambassador Bernal, the principal negotiator for CARIFORUM highlighted the two main challenges for regional integration: Firstly, the need to conclude and implement the decision of the tenth meeting of the Heads of CARICOM made on November 8th, 2004 to have the Single Market and Economy fully operational by 2005, and secondly, to implement the CARICOM-Dominican Republic (DR) Free Trade Agreement²²⁹. The EC recognised these as failures of CARICOM and used it to put the CARIFORUM on the defensive when it sought to press the EU for a new funding institution for the EPA processes. These were criticisms which the region could not successfully counter²³⁰.

At the first meeting of the Regional Preparatory Task Force (RPTF) which preceded the meeting of the principal negotiations, the Caribbean raised the question of the EU's policy on commodities and its impact on Caribbean bananas and sugar exports. This was an issue which the region was resolved to raise whenever the opportunity arose because of its vital importance to the region's security.

Within the context of the EPA negotiating sessions, the CARIFORUM participated in the launch of a regional Non-State Actors (NSA) network on the 13th of November 2004 in Barbados. The Cotonou Agreement had mandated the involvement of civil society in the development of the EPA in order for the regions to show ownership of the EPA. The purpose therefore of the NSA was to encourage dialogue among NGO's in the region to impact the out come of the negotiations. The principal negotiators addressed the group.

The occasion was used by both sides to highlight the importance of the EPA to the development of the region and the vital role of the private sector to the success of the EPA negotiation and implementation. Mr. Falkenberg was impressed that the Caribbean

²²⁹ Ibid.

²³⁰ Interview-Junior Lodge, Brussels. Nov.11, 2008.

had made considerable strides in the adjustment process and will deal with the realities of preference erosion. However, Ambassador Bernal was unequivocal in making the point to his EU counterpart that the level of adjustment envisaged by the EU in the banana tariff arrangement was unsustainable and cause problems in the Caribbean²³¹.

2.6.4 Negotiating Market Access

Next on the agenda was the issue of market access. The preparations for negotiating market access was enhanced by the third meeting of the CARIFORUM Technical Working Group (TWG) held in Dominican Republic on the 8-9th of December 2004. It prepared for the first CARIFORUM-EC Technical Negotiating session on market access scheduled for Jamaica on the 17th and 18th of December 2004. There the issues of market access were extensively analysed covered all areas of trade which touched upon the commodity protocols. The EU however had by then excluded these areas from the specificity of the EPA negotiations.

Akin to the question of market access was CARIFORUM'S drive to gain acceptance at the international level of the concept of Small Island Developing State (SIDS) as a special group in the global trading arena. The negotiations for the EPA presented an opportunity for the regions to make a breakthrough on this issue. The region placed so much importance on the issue of the SIDS to its sustainable development in terms of maintaining preference in the global trading arrangements and linkages with the EPA, that the CARIFORUM took its case early in 2005 to the international meeting convened to review the implementation of the program of action for the sustainable development of Small Island Developing States held in Port Louis, Mauritius, January 10-14th 2005.

There, the regions pressed for the implementation of the Barbados Plan of Action and the meeting adapted the Mauritius strategy along with a political declaration which highlighted twenty broad headings including issues of globalization and trade

²³¹ CRNM Update 0418, November 16, 2004.

liberalization. One feature of the declaration was that the SIDS should maintain preferential access and to allow all preferences to be phased out over a long period to avoid shocks and dislocation in those economies²³².

Prior to the Mauritius conference on sustainable development, the new EU Commissioner for Trade Peter Mandelson,²³³ had his first meeting with CARICOM Trade Ministers on the 6th of January, 2005 in Georgetown Guyana. Having recently succeeded Mr. Pascal Lamy, Mr. Mandelson confidently spoke of the upcoming conference on sustainable development scheduled for Mauritius and addressed CARIFORUM's concerns about the issues of development. He urged the region to participate in the Doha round and committed the EC to build coalition with the ACP Group on the development component of Doha. He also stressed that both the ACP and the EU "... must craft in the DDA .. a global strategy for the smaller and more vulnerable WTO Member States" but noted that the region's interests "...will be better served by embracing the round rather than seeking to slow it down and remaining over dependent on preference"²³⁴. Mr. Mendelson was not oblivious of his predecessors position on these issues, so on the question of the EPA negotiations he committed to put the EPA process under continuing review so as to make sure that the process would really put development first. He explained his decision to "establish a mechanism to monitor the roll out of development and trade related assistance, to check continuously whether or

²³² A/CONF.207/CRP.7. 13th of January 2005. Port Louis, Mauritius. The purpose of UN conference was to review the Barbados Plan of Action (BPOA) for the sustainable Development of SIDS. The BPOA was adapted in 1994 at the United Nations sponsored Global conference on the sustainable Development of Small Island Developing States. Held on the 25th of April to the 6th of May 1994. The concept of special category for Small Island Developing States had its origin in the Caribbean as a response to the issue of Globalization and its impact on small Island landlocked State and Small Island State in the Global political Economy, Also development in terms of the environment, climate change and Biological Diversity.

²³³ Peter Mandelson of the UK was confirmed as the new EU trade commission on the 12th of August 2004, replacing Mr. Pascal Lamy who become the new Head of the W.T.O. in 2004.

²³⁴ SPO5-202 EU. European commission commissioner Mandelson's speech to the CARICOM Trade Ministers in Georgetown on the 6th of January 2005.

not it is delivering the right result to build up local economic capacity and that the process really does constitute the true economic partnership”²³⁵.

On the question of the EU’s sugar regime which was of vital importance to the CARICOM group of States the Commissioner pledged support to produce an action plan to assist ACP sugar producers affected by the new sugar regime. He argued that development assistance would be advanced to assist the ACP to diversify and cushion the impact of the new sugar regime being instituted in the EU. He advocated urgent dialogue to define the measures and pushed for a formula to be agreed well in advance of the Hong Kong Ministerial in December 2005. On the question of banana, he treated it as an “unavoidable” result of the EU’s reform of its Common Agricultural Policy (CAP) and internal market reforms²³⁶. The Caribbean trade ministers took warmly to the position advocated by the EU Trade Commissioner as his speech was seemingly crafted for the special circumstances of the CARIFORUM States. Mr. Mandelson later tried to retreat, but the CARIFORUM States held him to those undertakings as the negotiation progressed and the Commissioner tried to shift positions²³⁷. The CARIFORUM Trade Ministers would not relented on the problems the EU’s internal market reforms caused and argued the devastation which those reforms would have on the region, even while accepting that non-reciprocal preferences would eventually go. So, a compromise had to be found as the EU was not prepared to make any change.

2.6.5 Small Island Developing States (SIDS) and the EPA negotiations

The concept of SIDS is the “brainchild” of the Caribbean²³⁸ and it had received recognition in some trade arenas and was a vital component of the region’s trade policy and strategies. The region’s objective was to use the EPA negotiations to further

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Dame Billie Miller, Speech to the Joint ACP-EU Parliamentary Assembly Meeting In Vienna, Austria June, 2006.

²³⁸ Interview- Sam Chandler, June 16, 2009, Bridgetown, Barbados.

highlight the need for more concerted and urgent global action on this issue so that the EPA would become a vehicle for the promotion and implementation of the SIDS.

The potency of the CARIFORUM case was carefully crafted and presented to the EU, which could not deny the logical and factual expressions of the region's case. The region argued that it wanted diversity in imports as net food importers, as it could not afford to be left exposed, as food security was vital to the region's sustainability. Therefore, even though the region does not export any of those products which it sought to protect, it had to protect them because the farmers of the region must be encouraged to remain on the land. This line of argument was not new as the region had made that position known to Europe from as far back as 2003 in Cancun²³⁹.

The region's approach was to avoid the economic issue of protection of its domestic agriculture and pressed their case by making reference to the practice of developed countries including EU Member States that support inefficient industries because of political reasons. The EU conceded and the CARIFORUM States got what they wanted. The EU however while making concessions to CARIFORUM's demands did not apply any political pressure to achieve any of its concessions²⁴⁰, indeed the EU made concessions in order to strengthen its global agenda through these negotiations.

2.6.6 Negotiating Trade Related issues

In phase II of the Regional negotiation, the Regional Preparatory Task Force (RPTF) agreed to examine eleven trade areas identified by the CARIFORUM States as areas which will bolster the regions trade capacity to include the areas of Investment, Competition policy, Government procurement and Intellectual Property.

The Europeans were very strong on two aspects of the "Singapore" issues; competition policy and Government procurement even though these were not put to the region at the launched in 2004, but were an integral part of the all ACP level phase I, where they

²³⁹ Interview- Sam Chandler, Barbados, June16, 2009.

²⁴⁰ Ibid.

were identified by the EU as issues for negotiation²⁴¹. The CARIFORUM States did not resist their inclusion because they wanted to negotiate services as a matter of regional priority. However the CARIFORUM States were careful not to concede on any issue which would undermine their position in the Doha Development Round of the WTO. They wanted to ensure that the negotiations kept in tandem with the Doha Agenda. So for example on the question of Trade Facilitation and transparency which were very crucial to the ACP states the region resisted the EU's demands and pressed the argument that they were being asked by the EU to make commitments which involved expenses on their part and the EC was not committing to assist the region in the transition. In this regard the CARIFORUM States at the all ACP level had taken the view that they would cooperate with the developed countries, only if they were prepared to commit technical and financial support to make the changes being requested by the developed countries.

So, by that same token the CARIFORUM States held out and argued that if Europe wanted commitment in those areas, then because of their size, the regional economies would need financial support to shoulder the burden which the CARIFORUM States were bound to face. Consequently, while the region was willing to make some commitments they needed the assurance of financial commitment from Europe. The CARIFORUM States were very cognizant of Europe's slowness in disbursing funds, and this was also of grave concern to them. So, the real challenge for the CARIFORUM policy makers was firstly, whether the EU would make the commitment and secondly if they did, then the type of framework to facilitate disbursement would be very critical²⁴².

The CARIFORUM States needed to be satisfied on both fronts before it would agree to the EPA.

However, the EU continued to press its case on the issues of trade liberalization and the MFN treatment, but was reluctant to make the concomitant commitments. So, as the

²⁴¹ Interview- Neville Totaram, Georgetown Guyana. June 25, 2009.

²⁴² Ibid.

Europeans pressed for market access in Government procurement, the CARIFORUM States made it clear that they had no mandate to negotiate market access in that area. But the CARIFORUM policy makers knew quite well that the Europeans were gravely in need of some concessions in this area as it was very important to their overall external trade policy and strategies, “Global Europe” particularly in the context of the Doha Round which was stalled and the EU wanted to get the round re-started.

The CARIFORUM States also knew very well that the EU was not likely to get concession on these issues in the other EPAs, at least not in the near future because most of the member State of the other configuration were LCD’s, which had no real interest in negotiating services or trade-related issues as they were benefiting under the Everything But Arms (EBA) regime. The region also knew that except for South Africa, most of the other ACP African States did not want to negotiate these issues. Therefore; for the EU’s global agenda to gain momentum they needed to have some concessions in Government procurement, but the Caribbean itself had serious constraints²⁴³.

The EU demanded CAFTA parity on the issue of public procurement; however the Dominican Republic decided to offer a compromise and gave the EU an undertaking to deal with the question with regard to future agreements. The Dominican Republic could not afford to open up to the EU to get CAFTA parity because of its Free Trade Agreement with CARICOM under which it gave CAFTA parity to the region.

The region realising the EU’s desire to get some concessions on the question of Government procurement made a compromise offer to deal with the full issue in the future, but would only make commitments in the area of transparency in public procurement. This compromise was offered in the context where not even under the Caribbean Single Market and Economy (CSME) was there any regional coherence on the issue nor were there any regional policy positions in this area. But the region was well aware that they had to make some concessions in this area to ensure the success of the negotiations.

²⁴³ Interview- Henry Gill, Barbados. June 10, 2009.

This compromise offer was accepted by the EU and it gave them “a foot in the door”, even though the region had not yet reached that point in their market access policy and was therefore not willing to concede on government procurement beyond the area of transparency.

However, this compromise would not have been forthcoming were the European not prepared to make concession on the question of funding for the EPA, the region’s success in this regards hinged heavily on its offensive and defensive tactical manoeuvres²⁴⁴, which was crafted particularly to deal with and counter what the region saw as Europe’s strategy in the negotiating process regarding the question of funding for the EPA. The CARIFORUM States had by this compromise gone beyond what most developing countries had agreed at the multilateral level. This was the break-through which Europe needed, so having had this, they could not afford for the negotiations to fail and were therefore prepared to make further concessions particularly in the area of Cultural services.

The region also recognized that while the EU was proclaiming its intention to fund development as it viewed the EPAs as instruments of development, it was very reluctant to commit the funds to assist the process. However, even though the CARIFORUM States were aware that it has always been the EU’s strategy to keep the financial package towards the end of its negotiations with the ACP States since their first encounter between 1973-1975, they were not prepared to wait because by then the trade commitments would have been agreed and it would have had serious financial implications far beyond any negotiations previously undertaken by the region and therefore it needed the assurances of funding support very early in the process.

The Commissioner for trade adapted a stance that only Commissioner or the Director-General for Development could address the question of development assistance and the trade commission deals with the questions of trade. This approach seemed to have given the impression to the ACP regions that the Commissioner was engaged in

²⁴⁴ Ibid.

“double talk” and was not been sincere. This approach was being pursued by the Commissioner for trade, while the Commissioner for development was being kept away from the negotiations, seemingly as a deliberate strategy to separate the two areas.

The CARIFORUM States decided to raise the issue at the joint ACP-EU Parliamentary Assembly because the matter had become very “thorny” and was threatening to derail the negotiating process. The Caribbean lead political negotiator, Dame Billie Miller, Minister of Foreign Affairs and Foreign Trade of Barbados was elected to the chair of the ACP Ministerial Trade committee (MTC). By then the issue of funding for the EPA had become an all ACP concern and a way had to be found to get clarification so that the process could move ahead. The Caribbean took the initiative to find that way and to get the issue onto the agenda of the upcoming meeting of the Joint ACP-EU Parliamentary Assembly scheduled for Vienna, Austria, June 20, 2006.

Senior Barbadian Ambassador and Vice Dean of the CARIFORUM’s College of Negotiators in Brussels His Excellency Errol Humphrey was requested to make arrangements for the matter of the EC’s approach to the negotiations be on the agenda of the meeting and for Dame Billie Miller to address that forum. The arrangements were successfully completed and the region’s brief was prepared by His Excellency²⁴⁵.

How to get the CARIFORUM lead political spokesperson to address the assembly undoubtedly posed some challenges. It was recognised that because Commissioner Mandelson was not scheduled to address that body of EU and ACP politicians, therefore to have the CARIFORUM’s political negotiator confirmed to address the gathering, it was agreed the Commission Mendelson would also address the Assembly. Neither of these officials were members of the Parliamentary Assembly.

But the region had lobbied Mrs. Glen Kinnock, Co- President of the ACP-EU Parliamentary Assembly who was sympathetic to the ACP cause to agree to the

²⁴⁵ Interview with Ambassador Humphrey, Barbados, June 12 2009.

address by Dame Billie Miller. The Co-President was known to be a friend of the Caribbean²⁴⁶. The decision to have Dame Billie Miller address the Assembly had taken Mr. Mandelson by surprise as he had not anticipated such initiative from his CARIFORUM counterpart, indeed he was deeply provoked²⁴⁷.

This was the CARIFORUM's direct opportunity to effect changes to the direction of the EPA negotiations. When the time came for their respective presentation, Dame Billie Miller spoke first. She was well aware of the gravamen of the issue and was prepared to impress the EC Parliamentarians as to the need for changes to be made.

Her presentation to this August body half-way in the agreed time line for completion of the EPA made a significant impact on the EU parliamentarian and in the presence of the EU's Trade commissioner she eloquently and with precision delivered a wide ranging speech so carefully crafted and presented was bound to resonate among the European Parliamentarians.

The ground work was laid for this presentation because, prior to this meeting the Caribbean had embarked upon several consultations and lobbying in European capitals for example in Berlin, just before Germany took over the presidency, in London during the presidency of the UK and also prior to the Finish presidency in 2006²⁴⁸.

The senior Barbados Minister was well prepared and strategically placed as the chair of the ACP Ministerial Trade Committee (MTC). She opened her presentation by noting that this was her first appearance at the Joint Parliamentary Assembly and underscored the importance of her presence. She took the opportunity to invite the Assembly to Barbados in November that year and stress the importance with which the ACP valued the input of the Joint Parliamentary Assembly (JPA) to the EPA negotiations. She spoke to four main issues which she believed went "...to the very heart of the EPA process" She addressed the core principles and also explained from the ACP's perspective that

²⁴⁶ Interviewed Dame Billie Miller, Former Senior Minister, and Minister Of Foreign Affairs & Foreign Trade, Barbados May 22, 2009, Kingston, Jamaica. She was also CARIFORUM Political Negotiator at the Ministerial Level for the EPA.

²⁴⁷ Interview with Ambassador Humphrey, Barbados, June 12 2009

²⁴⁸ Interview- Henry Gill, Barbados June 10 2009.

there existed a fear that the EPA was in danger of being compromised and remain an unfulfilled promise. She cited the four main areas of differences between the ACP negotiators and the European commission. These were

- 1) the pace and timing of the integration process
- 2) Giving tangible expression to the concept of development
- 3) Approach to tariff liberalization
- 4) Market access and the creation of effective funding mechanism for supporting EPA implementation.

She pointed to seven areas of convergence²⁴⁹ and remarked that notwithstanding marked progress in some areas, the disagreement is a serious reflection of the failure of the European Commissioner to offer meaningful expression on the question of development.

She drew reference to the EC's approach in applying pressure to the various ACP configurations to create custom unions are some other arrangements to facilitate them making common commitments in all disciplines. She noted that the approach being pursued by the EU's Commissioner for trade was conflicting to previous positions expressed by him in different arenas on the question of regional integration that these should not be directed from Brussels. She reiterated and emphasized that the approach been pursued by the Commissioner was neither acceptable nor practical and lamented that the EU's insistence on determining what is best for the regions and how they ought to arrange their economic space and also the pace at which they should move seemed more than a little disingenuous.

She argued that it was difficult to picture how the Commission in negotiating in the manner in which it has been proceeding in light of its previous pronouncement on the EPA. She also addressed the critical question of development and argued that the EC

²⁴⁹ 1) EPA should be tools for development 2) it should support regional integration processes 3) A decisive for long transition periods 4) granting improved market access for non LDCS 5) Asymmetry in trade liberalization and special and deferential treatment to ACP countries 6) Introduction simplified rules of origin.

seemed to have been downplaying the importance of the development dimension of the EPA talks. She drew reference to the early positions taken by Commissioners Mendelson and Michel, which follow up on similar positions advocated by their predecessors Commissioners Lamy and Neilson. She also bemoaned that these positions were replete with comments that the EPA are the instruments of development and were not designed to pry opened ACP markets. But, the Commissioner for trade was holding fast to the position that his mandate was to negotiate trade and not development, even in light of those statements he made to the EU's General Affair and External Relation Counsel as recently as the 11 of April 2006. So also, these were at variance with the very resolutions adopted by this Parliamentary Assembly.

In questioning the position taken by DG trade in the contexts of the Cotonou Agreement, she flatly suggested that were DG trade lacking competence on the developmental aspect of the EPA, it would be good were DG development be given a more lead role in the negotiations. She further pointed to the narrow interpretation being given to development issue by the Commission and explains their inherent contradictions in light of the Commission's very narrow focus on trade liberalization.

Minister Billie Miller made the case that the Commissioner's conduct had created a problem for the ACP in the context of ACP's approach to a Development –oriented EPA, which implied a need for special and differential treatment commensurate with level of economic develop, and the inextricable necessity to address supply side constrains a position which has been embraced by Commissioner Mendelson himself in principle in his various public utterances. But, while she endorsed the Commissioner's positions and statement, she lamented the problem of lack of action on his part or willingness to give real effect to those utterances. She rejected the EU's attempt at trying to create a singular ACP market regime where they do not exist and in circumstances where regions are not ready to make such moves.

On the question of the monitoring mechanism for EPA which was promised by Commissioner Mendelson to ensure that development assistance would be effectively rolled out, she commented that the ACP had “seen precious little evidence of this

monitoring mechanism and the proposed EU assistance to build economic capacity in ACP countries has not yet materialized”²⁵⁰, further ,on the issue of the Regional Preparatory Task Force (RPTF) which was established to link the EPA negotiations with development cooperation, she accused the Trade Commissioner of trying to frustrate the work of the task force and effectively preventing them from making timely delivery of the promised EPA related support.

The Barbadian Foreign Minister argued that this lack of support undoubtedly impacted the ability of the region to respond to EC’s demands in the area of Sanitary and Phytosanitary requirements and Competition policies, Industrial and Service standards and Trade Facilitation. She pressed the case for an alternate funding mechanism for EPA issues, separate from the burdensome and cumbersome EDF regime and its inability to respond with any sense of urgency.

She also address the question of the EPA review which was mandated by Article 37(4) of the Cotonou Agreement and emphasized that the review would be critical to the EPA negotiating process and implementation and called for the exercise to commence before the negotiations were completed.

Her closing comments seemed to have touched the “right cords” among the European Parliamentarians and also to the satisfaction of ACP Members represented as she remarked that during the eighteen months of negotiations, both Commissioners Mandelson and Michel had time and time again spoke about the development dimensions of the EPA, but have failed to live up to their promises. She called for those promises to be converted in concrete action and she reminded the EU ‘..that neither liberalized trade nor preference access to EU markets, separately or jointly, will promote developments by themselves” arguing that “.. because countries suffering from capacity constraints and institutional inadequacies will not be able to make the best use of market access, even under preferential terms”²⁵¹.

²⁵⁰ Dame Billie Miller’s Speech to the Joint Parliamentary Assembly, Vienna, Austria, June 20, 2006.

²⁵¹ Ibid.

The Senior Minister concluded by illuminating the point that the “EPA’s should not merely involve enhanced market access for traditional exports from ACP countries, they should help ACP countries to implement policies aimed at transforming their economies, diversifying production and benefiting multiplier effect associated with new value-added activity”.²⁵² She posited the view that this was what the ACP States had in mind when they spoke about the development dimensions. She described it as “..the road towards economic growth and sustainable developments which we would like to walk with our EU partners”.²⁵³

The Minister’s delivery lead to a significant break-through for the CARIFORUM States and the wider ACP configuration as it clarified the diverging positions. The diplomatic initiative seemingly took Commissioner Mandelson by surprise both in form and substance. It was suggested that it was from there onwards that Commissioner Mandelson began to take the region quite seriously²⁵⁴.

So, by the time the Joint Parliamentary group met in Barbados, November 2006 the region had made significant progress in all areas of the EPA negotiations as there was indeed a very marked contrast regarding the new approach towards the EPA negotiations by the EU Commissioner for trade. Minister Billie Miller had earlier announced²⁵⁵ that the EC had recognized the operation of the principle of “Variably Geometry” in the context of the region’s CSME and the CARICOM-Dominican Republic FTA and had therefore dropped its original demand upon the region to establish a Custom Union on the basis for EPA commitments.

Minister Billie Miller announced that the CARIFORUM and EC had agreed at the last session of negotiations on the importance of linking EPA and development cooperation.

²⁵² Ibid.

²⁵³ EPAS in danger of becoming unfaithful promises and expectation: Speeches to the 11th session of the ACP-EU joint parliamentary Assembly on the negotiation of economic partnership agreements by the Honourable Dame Billie Miller. Vienna June 20 2006.

²⁵⁴ Interview - Ambassador Errol Humphrey, June 2008 Bridgetown, Barbados.

²⁵⁵ In a speech to the south centre conference on EU-ACP trade relations at the international trade union house Brussels, October 12, 2006.

Each side had agreed a two-tiered approach to the EPA cooperation that is horizontal provisions and an outline of potential areas for cooperation specific to each discipline with the expectation that periodic review of each area will be undertaken during the implementation stages of the EPA.

On the question of supply sides constrained viewed in the context of the Hong Kong Ministerial and Aid-for-Trade support to which the EU Member States had endorsed, the Senior Minister expressed the view that “CARIFORUM negotiators would wish to see the EC counterparts give priority to addressing the region’s supply side constraints with sufficiently urgency to bring about a significant increase in the competitiveness of its economic operations before the reciprocal opening of the region markets”²⁵⁶.

Highlighting the issue of funding for EPA adjustment facilities and the slowness of the EDF regime to respond to financing of ACP projects, the Barbadian Minister stressed the current thinking of CARIFORUM States that the EPA adjustment mechanisms could be operated on a time-sensitive basis to support priority ACP trade capacity needs with the understanding that the management would be a joint exercise between the ACP and EU, through regional development banks in order to reduce time in the implementation of projects and for the beneficiary to show a sense of ownership.

In addressing the issue of review of the EPA negotiation mandated under the Cotonou Agreement article 37(4)²⁵⁷. She explained the region’s understanding of the meaning and intent of the provision and announced that the CARIFORUM States were working on a first draft which would be ready by November in which the key elements had been identified in consultations with the EU.²⁵⁸

²⁵⁶ Ibid.

²⁵⁷ This state that “the parties will regularly review the progress of the preparations and negotiations and, will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries to ensure that no further time is needed for preparation or negotiations.

²⁵⁸ These include 1) regional integration 2) major issue in negotiations 3) Development cooperation and support 4) Measures to support the timely completions of the negotiations 5) Schedule for further meetings 6) Ongoing support to negotiation, identification of CARIFORUM negotiating capacity needs 7)

2.6.7 The progress made in phase III

The Caribbean negotiators had made significant progress in phase III of the negotiations. However, at the end of this phase there were still diverging issues which need to be resolved; these therefore had to be carried over into phase IV. The 6th round of EC-CARIFORUM EPA negotiations ended with the EU-CARIFORUM Ministerial in Brussels November 29-30, 2006.

Prior to the conclusion, Ambassador Richard Bernal, gave an update on the state of progress of the negotiations to the Committee on Economic Development, Finance and Trade of the ACP-EU Joint Parliamentary Assembly in Barbados on the 18th November, 2006. He pointed out that while there were convergence and agreement on many issues, there remained significant divergence on both sides. He expressed the hope that these issues could resolve at the Ministerial scheduled for Brussels, November 29-30. But warned of the dangers of not reaching a resolution of these issues within the time line agreed by both sides. He declared that "CARIFORUM is committed to and will endeavour to forge on EPA within the schedule"²⁵⁹. However, while the region would vigorously pursue the commitments it made, he cautioned that such pursuit will not be at any cost. He was emphatic that in order to complete the negotiations, the CARIFORUM states must be satisfied that that the EPA will have development support to adequately meet its objectives given their circumstances. He identified the main unresolved issue under the broad headings of:

- a) Regional integration,
- b) Development,
- c) Adjustment cost, and
- d) Development cooperation

Implementation measures and funding 8) Monitoring mechanisms.

²⁵⁹ CRNM Update, Nov.2006.

The Director-General of the CRNM expressed confidence that the region would secure an agreement, but argued that the discussions were at a very critical juncture.²⁶⁰

These unresolved issues were later addressed at the Joint Ministerial held in Brussels, November 29-30, 2006. Trade Ministers from the Bahamas, Belize, Guyana, Jamaica, Suriname and Trinidad and Tobago attended. Dame Billie Miller of Barbados, who was the spokes person for the CARIFORUM and EU's Commissioner Mandelson, co-chaired the meeting and the Ministers agreed the following:

- 1) That the EPA should promote and support regional integration and provide for flexibility in terms of its recognition of the political and economic realities of the region.
- 2) That the issue of development cooperation must be linked to implementation of the agreement.

The Ministers were however, quite conscious of the challenges ahead The Ministers were however, quite conscious of the challenges ahead and they used the opportunity to raise the issue of banana and sugar with the EU Commissioner and emphasized the link between the EPA processes and CARIFORUM development.²⁶¹

At the end of phase III in 2006, the extent of the progress that emerged caused both sides to prepare texts covering the areas of Invitation, Competition policy, Personal data protection, Current payment and the Movement of Capital. In the areas of services and investment both sides had tabled their text which outlined the respective approaches to Investment and Service Liberalization, however the exchanges of offers were delayed. But the CARIFORUM States were ready to make their offer, the EU sought the delay because they were not ready to make their substantial offer in services. Each side agreed to make their substantive offer early in 2007.

²⁶⁰ Status and development of the EPA EC-CARIFORUM EPA negotiations; addresses by Dr. Richard Bernal to the ACP-EU joint parliamentary assembly's committee on the economic development finance and trade. Barbados November 18, 2006.

²⁶¹ RNM update 0617. December 20, 2006.

2.7 Consolidating the negotiations

Incorporating development enhancing measures as well as a taking a different approach to “tariffication” and the status and treatment of banana and sugar on the part of the EU were critical to the conclusion of the agreement within the schedule timeline. What had emerged was that even in light of Europe’s diminishing budget, European official had began to given consideration to leveraging the EPA through enhanced financial offers of support. They also realized that political dialogue at the highest levels of the CARIFORUM States had become necessary.²⁶² However, Jamaica’s newly appointed Foreign Trade Minister, Anthony Hylton expressed concerns about finding an appropriate balance to capture the regions desire to develop local industries. Europe was however not prepared to give open-ended commitments while the CARIFORUM States wanted to decide its configuration of how to maximise EPA funding because the issue of EPA funding was most critical at the opening of the final phase of the negotiation which impacted the existing uncertainties as to whether the timeline would be achieved. This concern had gripped both sides as each wanted to finish the agreement within schedule but for different reasons. However, the CARIFORUM States were resolved to conclude the agreement was highlighted in St. Vincent and the Grenadines at the 18th intersession conferences of the Heads of CARICOM on the 12th February, where except for Bahamas and Belize,²⁶³ all the Heads were in attendance..

²⁶²Jessop, David. *The view from Europe*. The Caribbean Council, July 14, 2006.

²⁶³ In attendance were; PM of Antigua and Barbuda, Hon. Baldwin Spencer, PM of Barbados RT. Hon. Owen Arthur, PM of Dominica HON. Roosevelt Skerrit, PM of Grenadier Carriacou and Petit Martinique, Dr. the Hon. Keith Mitchell, President of Guyana, H.E. Bharret Jagdeo, PM. of Haiti. Hon. Jacques Edouard Alexis, PM. of Jamaica. Most Hon. Portia Simpson Miller, Chief minister of Montserrat, the Hon. Dr. Lowell Lewis, PM. of St. Kitts and Nevis Hon. Dr. Denzil Douglas, PM. of St. Lucia, RT. Hon. Sir John Compton, President of the Republic of Suriname, H.E. Dr. Ronald R. Venetioau and PM. of Trinidad and Tobago Hon. Patrick Manning. The Commonwealth of the Bahamas was represented by H.E. A. Leonard Archer, Ambassador to the Caribbean community, and Belize by Hon. Eamon Courteney, Min. of Foreign Affairs and Foreign Trade. The associate members, Bermuda and the British Virgin Islands were represented by PM, Hon. Ewart Brown and Director of International Affairs Ms. Lorna Smith respectively. The host PM. Dr. The. Hon. Ralph Gonzales.

Dr. Ralph Gonzales , Prime Minister of the host country, in his opening address raised the question of the Region's relations with Europe and emphasized that for there to be a genuine partnership the region should demand that " dignity to be restored" and that "there needs to be a cleansing of the spirit and the historical decks".²⁶⁴ The Heads agreed that all efforts be made to complete the agreement within the scheduled but; hinted that the region's interest must be fully addressed. On the question of tariff liberation, they further agreed that the revenue implications must be carefully considered and addressed and also the critical issue of the inclusion of appropriate development components as a *quid pro quo* for a successful conclusion of those negotiations.²⁶⁵ It was quite apparent that the Heads wanted a conclusion on time, primarily to retain credibility. This expectation had implications for the regions, but the final signing-off on the agreement rested entirely with the Heads, singularly and collectively. There were concerns raised by the Bahamas, Haiti and the OECS regarding the resolution and the effect of the "variable Geometry" factor within the integration process and how the final settlement would impact on them as the EU wanted to treat the commodity protocols separate, but as regional exports to be dealt with in the context of the WTO liberalization requirement. However, for the Organisation of Eastern Caribbean States (OECS), the incorporating banana and sugar into the talks as part of the region's effort to extract concessions in leveraging service liberalization was very critical.²⁶⁶

At a special COTED meeting held on February 5, 2007, which reviewed the negotiation and gave further directions, Prime Minister Portia Simpson Miller of Jamaica in her address to the group, urged the Ministers of trade for the region to decide among other

²⁶⁴ Communiqué issued at the conclusion of the Eighteenth Inter-sessional meeting of the conference of the Heads of Government of the Caribbean Community (CARICOM), 12.14 Feb. 2007. Kingstown St. Vincent and the Grenadines. Released 48/2007. Feb 14, 2007.

²⁶⁵ Ibid.

²⁶⁶ Jessop, David. *July deadline for Carib/Europe Economic negotiations*, (Sunday Gleaner Feb.18, 2007, Kingston, Jamaica).

things, a strategic focus to point the way forward for the negotiations and define the nature of CARICOM's external relationship in the wider Caribbean basin ²⁶⁷ as this was vital for the integrity of the regional integration processes as envisioned by the region.

In as much as the approach adopted by the EC in the negotiations had changed since the Vienna Joint Parliamentary Assembly meeting in 2006, the EU negotiators were still not committing additional funds to implement the EPA and this had created the kind of uncertainties which potentially threatened to stall the negotiations in the final stages, in circumstances where the parties had already lost so much valuable time.

In this regard, the region decided to take its case to Germany at a meeting of EU's Development Ministers in Petersburg on the 12th - 13th of March 2007. There, Dame Billie Miller at the informal dialogue session explained the challenges faced by the ACP States and pressed their case for a specific chapter on development be included in the EPA arguing that it was necessary to overcome supply side of constraints. She announced that the region had convinced the EU Commissioner on that issue. The undertone of her argument before the Development Ministers seemingly was to urge political support for the Commission and getting the Development Minister to support the Caribbean's call for more resources. She justified the region's case for support by articulating CARIFORUM's undertaking to be engaged in objective assessment studies designed to prioritise its needs. The Senior CARIFORUM Minister had used the occasion to set a general political atmosphere among the European Policy makers on development issues deliberately intending to influence the outcome of the final phase of the negotiation so that both sides could conclude an agreement within time. Her intervention came at a critical juncture because the Development Ministers made a commitment to provide additional resources for development by Europe early in 2007, in good faith as a step to facilitate conclusion of the only comprehensive EPA within the ACP configuration of regional groupings as the others were limited in coverage to trade

²⁶⁷ Address to Prime Ministerial Sub- committee on external trade negotiations and the CARICOM Single Market and Economy: by P.M. Portia Simpson Miller, 5th of Feb. 2007, Montego Bay Jamaica.

in goods. This paved the way for what was to follow because on the 4th of April the ACP States received the EU's proposal on Market access covering full duty free Quota free access for all goods except rice and sugar. The region viewed this as an opening to formulate a response and shape CARIFORUM's position on the treatment of banana in the EPA. They accepted the offer, but were very concerned about the status and future of those commodities. The Heads gave a clear signal to the negotiators when they expressed the need for them to move assiduously to conclude the negotiations within time²⁶⁸ and on the question of the treatment of sugar under the EPA, they took the decision to seek a transfer of the benefits under the ACP Sugar protocol to the Sugar regime in the EPA. However European's resisted and the region had to craft another approaching. The Conference rejected the EU's demand to include provisions on good governance regarding tax issues in the EPA.

In the CARIFORUM's offer on services, the region stressed the importance of Modes 1 and 4 to involve the areas of tourism, professional services, culture and entertainment when the crucial last stage of the negotiation opened in May 2007 with only five month to conclude the agreement. So, by the time the 28th meeting of the conference of Heads of Government of CARICOM was convened in Barbados on July 1, 2007, agreement had been reached on many issues to include Innovation which was a Caribbean infusion into the agreement. The Heads endorsed those areas of the negotiation which had been resolved to include five main out comes namely; (1) The insertion of a specific chapter in development (2) An unprecedented maximum phasing period of 25 years for tariff liberalization for sensitive products (3) Reduced burden of tariff liberalization commitments by reducing the application of the principles of non-discrimination in tariff liberalization (4) To treat cultural services and the inclusion of movement of natural persons not linked to establishing commercial presence in the services negotiation and

²⁶⁸ Ibid, see also CARICOM Secretariat Press Release 167/2007, 5 July, 2007. Communiqué issued at the conclusion of the 28th meeting of the Conference of the Heads of Government of the Caribbean Community (CARICOM), 1-4 July, 2007. Barbados.

(5) The development of an exclusion list²⁶⁹. The final list of goods to be excluded was most difficult for the region to calibrate in light of the multiplicity of individual territorial tariff levels within the region due to commitments made under varying regimes in the context of conditionalities under existing borrowing arrangements for example, IMF programs and also the extremely important issues of revenue considerations, food security and protecting the agricultural base of the regional economies²⁷⁰.

Table 8: CARIFORUM: Liberalized and Excluded Goods

Goods to be Fully Liberalized	Excluded Goods
Live animals for breeding	Eggs, Chicken
Human Hair	Peas, Beans, Potatoes
Fertilizers	Rice, Sugar
Medicines	Cooking and edible Oils
Mushrooms	Pasta
Cars	Chocolate
various Capital goods	Milk and Milk products
Essential Oils and Perfumery	Frozen Meats and Fish
Salt	Some textiles (DR, Haiti)
Chemicals	Some Iron and Steel products

Source: Liberalized and Exclusions List (www.crn.org) downloaded January 9, 2009.

2.7.1 The closing stages of the negotiations

The Caribbean had intended to initial an agreement in October 2007, in order to have a WTO compatibility agreement by December 31st 2007. Their options however had been reduced to either having an agreement in place or face the consequences of the EU imposing the Generalized System of Preference (GSP) if no agreement was reached as the option to seek a waiver was no longer possible. The EU had expressly stated as a matter of policy that it had no intention of seeking a waiver. Indeed, the EU had commenced preparation internally to impose the GSP on the CARIFORUM States by 1st

²⁶⁹ RNM update 0710, July 12, 2007.

²⁷⁰ Interview- Sam Chandler, Barbados, June 10, 2009.

of January 2008, if there was no agreement²⁷¹. The possibility of settling for a goods only agreement was aired and been urged by some NGOs, however the political directorate within the region remained quiet on the issue, while preferring to conclude a comprehensive agreement as there would be no real gain, indeed the region would be at a disadvantage because of the GSP and the EBA regimes already in place.

The Caribbean negotiators had come to recognize that the EU was also very anxious to have an agreement and it was prepared to conclude only to the extent that any concession made beyond those already agreed would not impact negatively on the EU's overall external trade position in the global context. Both parties wanted a positive outcome, but for different reasons²⁷². So, by September, 2007, when the parties convened, the text of the agreement was essentially agreed, however, there were outstanding issues of grave importance that only the Heads at the political level could initiate any resolution. The Government of Jamaica was very vocal against the proposed MFN clause, arguing that it was restrictive on the part of CARIFORUM's trade policy space in the context of South-South cooperation²⁷³. The General Elections of September 3rd in Jamaica is important as it highlighted two significant developments in CARIFORUM political economy as it impacted the negotiations for the EPA. Firstly, because the newly Prime Minister became Chairman of the CARICOM Prime Ministerial Sub-Committee on External Negotiations and secondly, while the former Government was vehemently opposed to the EU's MFN proposal, the new Government took a different approach because having being in opposition for over eighteen years, it needed to stamp its authority and impacted regional leadership roles.

In the context of these negotiations, each side recognized the political realities of the deadline, the depth of the asymmetries and complexity of the variable geometry factors which exist among the CARIFORUM States. These negotiations for either side, was

²⁷¹ Interview- Henry Gill, Director-General CRNM. June 10, 2009. Barbados*

²⁷² RNM update 0712 Sept. 14, 2007.

²⁷³ Interview- Henry Gill, Barbados, June 10, 2009.

precariously positioned as neither could afford to stall. There was little to gain if the parties or either of the two were to hold back²⁷⁴. In fact, the process was by then, being driven by the deadline and the commitment not to fail. This had opened -up the realities for further and deeper compromises in order to close the negotiations in time. The political directorate on both sides had to meet to decide the way forward. Therefore, shortly after being sworn into office, arrangements were finalised for a Summit in Montego Bay, Jamaica on the 4th of October 2007. A special meeting of CARICOM Heads of Government and EC Commissioners for trade and development was convened in Montego Bay to coincide with the Summit. However, before the Heads sat with the EC Commissioners, they caucused to consider the CARIFORUM's final position. Time was a pivotal factor for these discussions if the negotiations were to close on time to meet the deadline set by the WTO. There, in his opening address to the Heads, Prime Minister of Jamaica, Honourable Bruce Golding observed the context of globalization in which the region's farmers and manufacturers will have to compete with imports from Europe where agricultural output is subsidized. He also spoke about the extent to which Caribbean bananas and sugar were under pressure because of the EU's internal market regime changes and called for an assurance that under the EPA the region would not be worse off than they were under Lomé and Cotonou. Further, he urged the region to move ahead and conclude an EPA of which it can be proud to present to its constituents. The Jamaican Prime Minister indicated the region's intention regarding the type of EPA it wanted and that the region was committed to complete the deal within time. This assurance was important to the Europeans as it sought to open-up their negotiators to the thinking of the new Chairman. In their deliberations prior to the meeting with the EC commissioner, the CARIFORUM Heads had to take some tough decisions. They made a positive and calculated decision that the European's wanted an agreement, but was not prepared to pin itself to guarantee for funding outside of the established EDF; but would consider alternative sources of funding. The fact is that no

²⁷⁴ RNM update 0712. Sept. 14, 2007.

previous Trade Agreement had gone that far in providing financial guarantees, and to do so would have arguably left Europe very vulnerable in future negotiations especially with Latin America.²⁷⁵ So, also, Europe understood and was indeed very cognisant of the region's position in standing its ground in the areas where it would not concede. Europe therefore did not apply pressure through a rely on its superior economic strength and sheer size of its market to force the CARIFORUM to open up their markets²⁷⁶ because they knew the region's limitation, concerns and vulnerabilities for failing to meet the deadline²⁷⁷. In short, none of the parties could afford a failure, but for different strategic reasons and so, the CARIFORUM Heads decided to accept the liberalization arrangements and the MFN clause after the EU's Commission for Development made the proposals to give effect to the need assistance for trade related adjustment and implementation support for the EPA. But needed firm commitments regarding the source of funding and the ease of disbursement. Therefore, the CARIFORUM Heads were quite calculated in their actions and indeed were very calm and cordial to both EC Commissioners.²⁷⁸ There were continuous discussions of varying levels during those sessions, with many side meetings and a flurry of activities on both sides, political and technical. So, by the time the parties actually convened for formal talks, several issues had already matured²⁷⁹. During those negotiations, Prime Minister Owen Arthur of Barbados made it a *quid pro quo* for the region to agree to EPA, that Europe must agree to the inclusion of Cultural services. The European objected, on the

²⁷⁵ Interview- Henry Gill. June 10, 2009. Barbados.

²⁷⁶ Interview- Henry Gill, Sam Chandler, Neville Totaram, Elsa Finet, Carl, Grenidge, David Prendergast, Gregory Downes, A. Zampetti, Fredico Cuello, Errol Humphey, Billie Miller et al.

²⁷⁷ Interview- Henry Gill and Sam Chandler, Barbados.

²⁷⁸ Interview- Henry Gill. Barbados.

²⁷⁹ Ibid.

grounds that they had no such mandate, however in the end they conceded, although the Netherlands had opposed it vigorously.²⁸⁰

The Heads agreed a five (5) point formula for a way forward to completion within time as follows: (1) That priority be given to development and also specific provision for technical assistance, capacity and Institutional building, regulatory reforms; the design and implementation of the EPA (2) Emphasized the significance of the increased European Development Fund(EDF) allocations, and additional resources from the EU's Aid-for-trade strategy contained in the Memorandum on Development Cooperation by the European Commission. (3) The provision of further guidance to CARIFORUM negotiators along with their European counterpart to finalize other outstanding issues including market access for goods, services and investment. (4) The tabling of CARICOM proposals aimed at securing the viability of the regions sugar industry, and (5) to continue to press for specific development assistance for the regions vulnerable banana industry.²⁸¹ The region insisted that it was prepared to walk away from the negotiations if Europe was not prepared to make further concessions. At this juncture, the region's defensive and offensive strategies in the negotiations processes had emerged and it brought into very sharp focus their understanding of the European's need and the extent of Europe's limitations in terms of their global trade agenda and general responsibilities to their own constituents. This recognition seemingly lessened the pressure on both sides to make concessions beyond the extent of their mandate. The negotiators' next meeting was set for October 29th-November 6th to finalize the outstanding issues based on the new guidelines issued by the Political Heads of the Region. But, the EU had by then indicated that they were willing to stay their position regarding the imposition of the GSP regime until mid- November 2007, after which there would be no guarantee for "late comers". They indicated that if any ACP country which was not included in the transitional arrangements, then the GSP would be imposed. The

²⁸⁰ Interview- Henry Gill 10.6.2009. Barbados.

²⁸¹ RNM update 0713 Oct. 11, 2007.

CARIFORUM States was quite cognizant that the EU's position was directed at the region to stave any possibility of stalling the negotiation tactically in order to gain further concessions. They therefore took the position that the threat was not a veil attempt to pressure the region to conclude the negotiations on time. The Director-General of the CRNM, Richard Bernal stated that the November meeting would be the last opportunity to close the deal if they are to meet the deadline, and emphasized that "... under no circumstances would CARIFORUM sacrifice the quality of the agreement to meet any given schedule."²⁸² as this was recognized as a possibility by both side in 2004. The CARIFORUM Heads again convened in Guyana on the 7th of December 2007 this was intended to be their last meeting before the expiration of the non- reciprocity trade provisions of the Cotonou Agreement, they having previously convened in the Bahamas in November. The MFN clause and exclusions list was still a major obstacle in the negotiations. At that meeting, the Guyanese President Bharrat Jagdeo proposed that the region accepts the EU's proposals and the political economy had therefore prevailed as the Heads accepted the position advanced by President Jagdeo who had commended the region's negotiators.. Even then, the more difficult issue of the Most Favoured Nation (MFN) remained unresolved, it being an area in which the CARIFORUM States had very little flexibility and no real fall back position and a compromise had to be reached to move beyond this difficulty.²⁸³ .

The December meeting gave the final instructions and guidance to the negotiators; so that by the 10th of December, the Prime Minister of Jamaica in his capacity as chairman of the Prime Ministerial Sub-Committee on External Negotiations dispatched a letter to His Excellency Jose' Manuel Barroso, President of the European Commission indicating the regions willingness to conclude the negotiations and that it will present the final text by December 14. The Jamaican Prime Minister however, impressed upon the EU President the need for the EU to respond positively on the question of market

²⁸² Ibid.

²⁸³ Interview- Junior Lodge, Brussels, May2, 2009.

access in the very fundamental areas of entertainment and recreation, the region's proposals on Mode 4.regarding contractual service suppliers and independent professionals in the areas of entertainment and recreation²⁸⁴. He emphasised the immediate impact and importance to the region's economic viability and urged further concessions in order to conclude on time.

So, with less than two weeks before the scheduled close of the negotiations, the CARIFORUM States made one last offer and further requests which would determine the failure or success of the negotiations within the time limitations. This notwithstanding that it would be far too late to consider any other practical and feasible options in light of the EU's continuous opposition to the idea of seeking a waiver and the threat of the imposition of the GSP regime. However, the CARIFORUM's master diplomatic move at this late stage was coined in Prime Minister Golding's letter, because it left open the possibilities of placing the blame at the feet of the powerful European Union in case the negotiations were to have failed to meet the stated deadline for completion. At this stage however, the negotiations were indeed very delicately poised and neither party anticipated nor wanted a failure. But, the CARIFORUM negotiators at this stage had two distinct advantages in the process; one strategic and the other political and tactical. While Europe had only one advantageous position, being its economic power and ability to unilaterally impose the GSP on the CARIFORUM States. The region's, strategic offensive position rested within its knowledge as to what the EU wanted which was, to get an agreement which could give a fillip to its global trade agenda more so, in the areas of the so called "Singapore issues". Politically, the region knew that the EU's negotiators could not go back to their principals for further guidance for the negotiations, while the CARIFORUM negotiators had access to their political Heads at all material times. Further, the EU could not afford a failure as its international reputation would be hurt as blame for the failure would have been placed upon them. Further, the

²⁸⁴ Letter from the Office of the Prime Minister of Jamaica, dated, December 10, 2007 to H. E. José Manuel Barossa, President, European Commission.

CARIFORUM States would gain international sympathy as Small Island Developing State (SIDS) being bullied by their former colonial masters. Therefore, when the two sides convened for the last time in Barbados at the principal negotiators' level between December 14 and 16, 2007 to conclude the agreement, the atmosphere seemed ripe for last minute concessions to be forth coming. So, as the pressure mounted, the EU made further concessions on mode 4, cultural services and alternate mode and sources of financial support for implementing the EPA. The CRNM was in charge of monitoring the negotiations and had relied upon the use of telephone conferencing with the Heads of Government in the region throughout the meeting and more particularly on the night of the 15th December, constantly updating them of the progress being made and getting their consent for CARIFORUM's positions as the negotiations hastened towards the end. The deal was finalised at 1 am on the morning of the 16th the Heads of States of CARIFORUM were agreed on the terms of the final text.²⁸⁵ So, after three years and ten months of negotiations, the principal negotiators initialled the agreement which signalled the end of the negotiations²⁸⁶, but not before CARIFORUM Heads were all consulted via telephone in the early hours of the morning of the 16th of December 2007 to sign off on the final text.

2.7.2 From initialling to signing of the EPA

The initialling of the agreement signalled that the negotiations from the principal negotiators stand point was over and the residual matters were now in the charge of the political and diplomatic machinery to see them through to the signing. The Director-General of the CRNM and principal negotiator for the CARIFORUM States, Ambassador Richard Bernal speaking at the initialling commended the technical staff and the political directorate of the region for their efforts in carrying through the negotiations to completion. He described the agreement as a "momentous and proud achievement for the region. In emphasizing the region's achievements and experiences

²⁸⁵ Interview with Henry Gill, Director-General of the CRNM, 10.6.2007, Barbados.

²⁸⁶ Chronology - CARIFORUM-EPA Agreement. Sunday Gleaner July 20, 2008.

during the process of these negotiations he described the efforts as “unprecedented in the region”²⁸⁷. The Director-General expressed the view that the region had always wanted an agreement which “Met core standards to make it a good deal”. He argued that the strength of the agreement in terms of the key areas necessary for regional development and expressed appreciation to the Europeans for their contribution to the process and made the point that the CARIFORUM States had triumphed in securing concessions from Europe. He further expressed the view that “..the EC should find satisfaction in the triumph, as Europe, despite its own domestic reservations and sensitivities was able to give meaningful concessions” which are very vital in terms of CARIFORUM development. Because, despite Europe’s own domestic reservations and sensitivities it was able to give meaningful concessions, vital to our region’s developments”.²⁸⁸ Mr. Karl Falkenberg, the EC’s Director-General for trade spoke on behalf of the EC and made it clear that although the agreement had its strengths, notwithstanding, it must be used appropriately as a tool for development. He stated commended the stake- holders for their hard work in completing this agreement and argued that the task which now faced the region has just began. He stressed the point that the task has shifted to the implementation of the agreements²⁸⁹ as both sides seemed quite satisfied with the outcome and were eager to move to the next level.

The passage between initialling and signing the agreement was very tumultuous and had threatened to undermine CARICOM’s unity and solidarity as politicians, retired diplomats ,regional academics, labour unions, the media and civil society began to oppose some areas of the agreement arguing that the region gave up far much and received too little. The opposition voices were quite pronounced in Barbados, Guyana,, Jamaica and Trinidad and Tobago. Publicly, the agreement was embroiled in controversy. Most regional Heads, with the exception of the President of Guyana who

²⁸⁷ Richard Bernal’s comments at the initialing of the Agreement. CRNM Update 0716.Dec.19, 2007.

²⁸⁸ RNM update 0716, Dec. 19, 2007.

²⁸⁹ Ibid.

led the political wing of the opposition to the agreement, failed to come out and publicly embraced and defended the agreement which they had authorised. The problem with Guyana is that it not to play a major role in the negotiations and the political economy of the decision making at Montego Bay meeting²⁹⁰ but was caught up in the whirlwind of the decision making process to meet the deadline for completion and wanted to find a way to redress those short comings to satisfy its domestic constituents.

At the 19th intercessional Meeting of the Heads of CARICOM held in Bahamas March 7-8, 2008, the issue of the CARIFORUM EPA was high on the agenda for discussion due to the level of public criticisms which was taking place across the regions and the internal divide within the ranks of the CARICOM Heads. In his address to the meeting, Jamaican Prime Minister Bruce Golding gave his full support for the agreement and explained the procedure the region followed in arriving at the deal. He stressed the need to move on to the implementation of the agreement as time was of essence²⁹¹. The Jamaican Prime Minister got support from of the Barbadian Prime Minister, the Honourable David Thompson who argued that the global order was changing and the region cannot be left behind and further that the agreement was only possible because the region has come to recognise this phenomenon. Guyana had differed signing the agreement and argued for a goods only agreement, but the EU threatened that it would not accept a goods only agreement. The Guyanese Government called a national consultation with stake- holders before it took any final decision. Guyana continued to oppose the signing of the agreement and it needed a way forward to redress its earlier failures in following the consensus path of the region. The agreement was slated for signing on September 2, 2008, but it had to be rescheduled for various reasons occasioned by both sides. Firstly, the Agreement had to be translated into the languages of the EU. This also contributed to the delay; however, there were some lingering doubts in the European Capitals about the efficacy of signing the agreement

²⁹⁰ Interview - A Caribbean officials, Barbados. June 10, 2009.

²⁹¹ Presentation by P.M. Bruce Golding on the EPA to the 19th inter-sessional meeting of CARICOM Heads Nassau Bahamas. March 7, 2008. Gov. of Jamaica OPM.

as some European Parliamentarians felt that the European Parliament should await the approval of CARIFORUM Governments before it approved the agreement.²⁹²

At the fourteenth special meeting of the conference of Heads of Government of the Caribbean Community in Barbados on the 10th of September 2008, the Prime Minister of Barbados, David Thompson again urged his colleagues to sign the agreement and sought consensus within the Community among Member States as the issue of signing of the agreement had threatened to damage the sense of unity, cohesion and solidarity which has been the hallmark of Caribbean diplomacy since the signing of the Treaty of Chaguaramas. However, Guyana had by then completed its national consultations on the 8th of September, which was arguably as a political rallying a point of departure where all the dissenting voices were heard. The consultations rejected the agreement and called for the re-negotiation of certain terms. This meeting followed closely after the twenty-ninth meeting of the conference of Heads of Government of the Caribbean Community (CARICOM) 1st-4th of July 2008 in Antigua and Barbuda, where the Heads of Government expressed a willingness to sign the agreement. However, the Bahamas, Haiti and Guyana had various concerns and were not comfortable about the directions of the regional positions and the potential impact on their economies. But, time was running and even though the EU had stayed the imposition of the GSP regime the CARIFORUM States were well aware that the EU could still impose the regime if the agreement was not signed. Therefore, ten months after the initialling and following upon various levels of intra- regional negotiation, public discourse across the CARIFORUM region, a decision was taken at the CARICOM Heads of Government Conference in July to sign the agreement. However, by convention, CARICOM Member States strive for consensus in regional decision making. But, as they sought consensus, Guyana insisted that as a condition for its signature, a five year review clause must be incorporated to allow for the agreement as a whole to be review. With regard to Guyana's position, the CARICOM Heads at their July Summit noted that national

²⁹² Miranda Larose; Deferring of EPAs signing on the Horizon*Stabroeknews, Guyana August 12, 2008.

consultations were on going in Guyana and decided await before a decision is taken to fix a date for signing the agreement. However, Barbados was confirmed as the venue for signing of the agreement. The Heads had suggested possibly date of July 30 or August 30th for signing, but had to change to facilitate the development in Guyana, so by the September Summit they agreed on the 15th of October 2008 for signing, Guyana's protests by then, were less confrontational as the EU has agreed to the inclusion of the five year review clause demanded by Guyana as a *quid pro quo* for its signature.

The signing ceremony took place on the 15th December in the Barbadian Capital, Bridgetown. Honourable Christopher Sinkler, Barbadian Minister of Foreign Affairs and Foreign Trade and the EU, Vice President Siim Kallas was among other speakers. The Barbadian Minister, outlined the process which took the region to the signing of the EPA, the steps to be taken to implement the agreement and the region's expectation of Europe in support to implement the agreement. In his response, Vice President Kallas of the EU gave the assurance that the EU was committed to the success of the agreement, and expressed the view that what the parties were involved with was more than just the completion of an agreement to change trading relationships, but instead to place the CARIFORUM region on the map as an exporting market where traders and investors can find Innovation and opportunities for growth and security of their investment. The agreement was signed by representative of all the CARICOM Member States except Guyana and Haiti²⁹³ and the twenty-seven Member States of the European Union. So, after a prolonged period of negotiation the CARIFORUM-EU EPA had become an official trade agreement which is now noted at the WTO and is deposited in the Depository of the EU.

²⁹³ Guyana signed the EPA on the 20th October, 2008 in Brussels, while Haiti signed on December 11, 2009.

2.8 Conclusions

Europe had made a decision in the context of the dynamism of negotiation at the WTO that the non-reciprocal trade arrangement had to be discontinued. CARIFORUM State accepted the realities. So, in negotiating the EPA the question had to be answered as to how the region would negotiate a deal with Europe for itself in the context of the new and emerging trends of world trading arrangements. The issues to be negotiated were formidable, and in some areas were never negotiated in a free trade agreement before. The Region realized however, that to maximize their position of weakness as an offensive and defensive approach to those negotiations were appropriate strategies.

The region did its research and drew upon its knowledge of the EU occasioned by their longstanding relationship and was therefore well prepared to negotiate. The EPA was never requested by the ACP States. Indeed, they resisted it but Europe and the WTO wanted reciprocity and the ACP had to give in. Europe has changed since 1975, so also has been the relationship between the two sides. Many of the more recent Member States of the EU have had no real understanding nor sympathies for the ACP States. But the Caribbean knew the issues at hand and the monumental task of negotiating with Europe and was equal to the task of negotiating a free trade agreement within the realities of international bargaining with a Two-Sided Constrain. The Caribbean knew that their strength States and also that some of the EU's Membership had no affiliation with the region and therefore expected no colonial empathies, but accepted the importance of the value of being small Island State and by effectively appealing to the emotions and conscience they gained some advantages in leveraging the negotiations.

Going into the negotiation, the Caribbean knew that Europe, although economically and politically was stronger partner, the region was not prepared to be dictated to by Europe and so when Europe tried to push its brand of development and the type of regional economic arrangement that should be put in place under the EPA, the CARIFORUM States successfully resisted by soundly arguing their case and displayed positive diplomacy. So, the region had its own policies clearly defined and a philosophy for its

own development and was not prepared for it to be replaced by European understanding of development. While the CARICOM States had to draw on the lessons of the Uruguay Round and the experiences of negotiating the FTAA to inform its approach to negotiating the EPA, the Dominican Republic was well endowed in this area through the CAFTA experiences which was bought to the fore by both regional groupings, a factor not shared by the other ACP configurations. This combination of experiences and knowledge seemingly underscored the new paradigm in Caribbean Commercial Diplomacy. Therefore, at the all ACP level ,the EU's stance seemed to have frustrated the ACP's strategy for the regional negotiation phase. The EU's strategy succeeded because the ACP States had become fragmented and their unity had waned over the years. The EU's strategy of "divide and rule" had succeeded at the all ACP level, but the Caribbean was determined not to allow it to succeed in the regional negotiation for the EPA. The region spoke with one voice through the Regional Negotiating Machinery(CRNM) with the authority and support of the political directorate both at the Ministerial and the Heads of Government levels.

From as early as 2003, EU Commissioner, Pascal Lamy made an offer that Europe was willing to commence negotiation with any region that was ready to negotiation even before the All ACP phase was concluded, suggested that the Europeans had no interest in a successful conclusion of all ACP talks from the ACP's perspective. CARIFORUM States recognized that when the Central and Southern African configuration accepted Commissioner Lamy's offer, the fracture in the ACP's cohesion and solidarity was exposed in a very fundamental way and therefore the region had no choice but to go it alone. The Caribbean knew that they were more prepared than any other configuration but did not take up the EU's offer, but and therefore waited to see the response of the others. At that time, the region was cognizant that with the stalled Doha Round and the problems at the multilateral level, the EU wanted some success especially on the so called "Singapore issue", more so in light of the Seattle and Cancun experience. Europe wanted to get those issues restarted and to extent that the Caribbean would be prepared to negotiate those meant that "Global Europe" would get some momentum.

The Caribbean also appreciated the importance of those issues to the European's global trade strategy and sought to capitalize on that. The Caribbean knowing also that the EU's mandate issued in 2002, placed some emphasis on trade in service and the trade related issues and that once given it is very inflexible and indeed very difficult to change; or renegotiate and the region was prepared to use that inflexibility to its advantage instead of trying to get it to be more flexible. .And so, when the European's responded to issues raised by the CARIFORUM States and argued that they had no mandate to negotiate, CARIFORUM appealed to the emotional sensitivities of Europe by going to the political directorate to get answers.

The region was also very cognizant of the historical tradition of Europe democracy and used the network of NGOs and the media housed to its advantage,. Both the print and electron media were used a medium of expressions to reach and influence the European public on the issues of the conduct of the negotiations in order to get its way in the various European Capitals.

The Caribbean also used the influence of the European Parliament to get concession by appealing to them through the ACP-EU Joint Parliamentary Assembly. The region's decision to take that initiative created the opportunity for its chief spokesperson Dame Billie Miller to address the meeting of the Joint ACP-EU Parliamentary Assembly in Vienna in June 2006. The event remains as one of the most masterful piece of diplomatic feat carried out by the ACP States and more particularly the CARIFORUM region in the entire EPA negation processes. That was the opportunity which created the break- through which ended Mr.Peter Mandelson's "divide and rule "double taking approach to the negotiation. That change in attitude towards the negotiation augured well for the ACP as a whole, up to the end of the negotiation as Mr. Mandelson was kept in check by the European Parliamentarians and the European press to a large extent. Because while the mandate to negotiate the EPA was specific, it did not speak to the manner of how the negotiations should be conducted in terms of tactic, strategies nor personalities, nor the issues for calibration in the negotiations nor the other DGs to

be involved. So, therefore when Mr. Mandelson took over as Commissioner for trade and sought to find his “footing” among the regions and in doing so, had made several speeches outlining his intentions, the CARIFORUM States used his utterances of policies and directions to extract concessions and also forced an end to his public and private posturing regarding the EPA. In the end however, there were no specific area in which the EU did not compromise, their main concern was to get a degree of liberalization of 90% or above but, settled for 85%. When the EU tried to get parity under the Central America Free Trade Agreement (CAFTA) from the Dominican Republic (DR) they refused and the EC settled for an undertaking for future arrangement. When they sought to get the Caribbean States to give 90% liberalization, the regions offered the defence of “Variable Geometry” and the existence of its own internal market arrangement. The liberalization formula was only achieved through regional solidarity and unity, because it was the offer made by the Dominican Republic to the CARICOM States which brought the region’s combined offer to meet WTO compatibility requirement.. The fact is no other country in the region could have done what the DR did without suffering severe economic injury and loss of revenue.

What was made clear to the Europeans by the CARIFORUM States was that as a region they were not prepared to go to Europe with “Cap in hand “as the basis of their negotiating strategy. The region knew the age-old strategy of the Europeans to hold the question of funding as a matter for discussion towards the end of these negotiations, where it can be used more effectively to extract concessions. But the CARIFORUM States was well aware that this negotiation was not in the same realities as the old Lomé type agreements it therefore demanded that the necessary financial support be addressed very early, because only those assurances of adequate funding would secure a deal. The EPA is a free trade agreement which was demanded by Europe and had to be negotiated in a very serious way and therefore the CARIFORUM States wanted guarantees of development assistance, not in the form of hand -out Aid packages, but as an integral part of process to move the region to grow itself out of poverty and take its pride of place in the global trading arena. So, when the EU pressed

on the issues of intellectual property, the Caribbean put the issue of Innovation on the table. This was a Caribbean concept, so innovative and carefully presented and analyzed; that in as much as the European negotiators said they had no mandate to negotiate it, but the region left the European's with no room to reject it. Because the CARIFORUM States came under pressure due to the applications of the European Union's Common Agricultural Policy (CAP) and the reform of their internal market, its banana, sugar and rum industries were being affected by the EU's approach to the reforms. Europe however, refused to engage the region in any meaningful discussion of those internal reforms but the region would not give-in easily, and used every opportunity during the negotiations to convey a sense of European "betrayal" of their historical and legal commitments to the ACP partners. The EU's unilateral denunciation of the Sugar Protocol which had been in place since 1975, had left a bitter taste in the CARIFORUM region and that decision was understood by the region as a signal of the changing Europe on which they could not rely as much as they did in the past.

While the CARIFORUM States fully understood, that Europe had to be cognizant of competition from Brazil, China, India, and NAFTA and also the need for it to shape a relationship with the developing countries of Asia and North Africa which are not Member States of the ACP, it expected the EU to do what it saw as being in its best interests a position for which they could not be faulted. The Caribbean accepted that services and trade in services remained an emerging trend in the region's trade pattern as its agricultural base was being diminished, and so that it was in the region's best interests to negotiate a comprehensive EPA and not just an EPA to for trade in goods. Therefore, Inward flows of investment are very crucial to the Regions development and so it was important to negotiate the so call" Singapore issues". However, both parties wanted this agreement, but for different reasons and so in the end this was a pivotal factor which drove the negotiation as each side knew the consequences of not having an agreement in place by December 31, 2007.

How the CARIFORUM States had prepared themselves for the negotiations of the EPA exposed a model of inclusiveness, coordination, vision and a sense of the maturity of its diplomacy within the region and externally. The level of preparation and the breath of activities which informed the preparation underlie both the legitimacy and competences of the process. It was a model of success in terms of structures, processes and the outcome. In a very frank presentation to the Joint ACP-EU Parliamentary Assembly in Vienna in June, 2006, Senior Barbadian Minister and political spokesperson for the CARIFORUM EPA, Dame Billie Miller let the European Union know how the CARIFORUM and the ACP state felt about their positioning and the reality of their conduct and questioned their political will to give meaning to their verbal expressions on the question of development. He approach to these issues was very effective.

The region's approach to the negotiations was very focused and being driven by their desire to stand on their own and develop its resources and resist being dictated to. In the end both sides made compromises and the negotiations processes has further bonded the region as group of Small Island Developing States (SIDS) for a better understanding of their own aspirations. The CARIFORUM region got a deal which is not perfect, but one they are prepared to work with. The critics however, are of a different persuasion.

CHAPTER THREE

A critical analysis of the CARIFORUM-EU Economic Partnership Agreement (EPA)

3.1. Introduction

The CARIFORUM –EU Economic Partnership Agreement is a Free Trade Agreement with development dimensions .It replaces the Cotonou Trade Agreement between the EU and its former Colonies in Africa, Pacific and Caribbean (ACP) which was the successor to the Lomé Conventions 1975-2000.The EPA was negotiated across six regions in the ACP Configuration of States between 2004 and 2007 to coincide with the expiration of the waiver granted by the WTO for the Cotonou Agreement in 2001.The CARIFORUM States were the only configuration which had signed a comprehensive EPA with the EU at the end of 2007 to be implemented over a twenty-five years period. The purposes of which are to eradicate poverty, build regional integration and gradually integrate the ACP States into the global economy. The CARIFORUM EPA is the first Free Trade Agreement negotiated by the Caribbean the terms of which have gone beyond the WTO provisions. The agreement is very far reaching in terms of its commitments and scope covering the so called Singapore Issues. Never before were these issues negotiated to the extent that they have been in this Free Trade Agreement.

This chapter examines some aspects of the provisions of the CARIFORUM-EU Economic Partnership Agreement (EPA), highlighting the major areas in terms of the CARIFORUM negotiating mandate and analyse why these are relevant to CARIFORUM's Economic and Social development and Policy cohesion.

3.2 Structure and Provisions of the CARIFORUM- European Union EPA.

The main agreement has four parts, Seven Annexes, three Protocols, final Act and joint declarations, covered in two hundred and fifty Articles.

Part I outlines the objectives, guiding principles and the general terms of the agreement.

Part II, contains four titles and twenty chapters covering the areas of: Trade in Goods, Investment, Services and E-commerce, Current payment and Capital movement, Trade related issues if to include competition, innovation and intellectual property, Public procurement, Environment, Social aspects and Personal Data Protection and Part III addresses the issues of Dispute Avoidance and Settlement covered in two chapters, while Part IV covers General Provisions.

3.2.1 Part I: Objectives

Article I sets out six main objectives of the agreement to include (a) Contributing to the reduction and eventual eradication of poverty through the establishment of a trade partnership consistent with the objective of sustainable development, the Millennium Development Goals and the Cotonou Agreement;(b) promise regional integration, economic corporation and good Governance; (c) Promoting the gradual integration of CARIFORUM States into the world economy; (d) improving the CARIFORUM States' capacity in Trade policy and Trade related issues, (e) supporting increasing investment, enhancing supply capacity, competitiveness and economic growth; (f) Strengthening the existing relations between the parties on the basis of solidarity and mutual Interest. It recognized the asymmetrical nature of the relationship in the liberalization of Trade due to the level of development consistent with the Cotonou Agreement and the WTO requirements of reciprocity and trade liberalization. These represent the broad context of the negotiation in keeping with the desire of the parties. The issue of development is integrally linked to CARIFORUM Trade policy and is very important to its development strategies. Conceptually, the CARIFORUM viewed trade as developmental because it guides and drives of development. The CARIFORUM States got the Europeans to agree and accept its conceptualization as being crucial in order to get an agreement²⁹⁴ and therefore, development issues are addressed in almost all areas of the Agreement and are also contained in a dedicated chapter. The CARIFORUM States by getting the

²⁹⁴ Interview- Henry Gill, Barbados, June 10, 2009. Sam Chandler, Barbados date June16, 2009.

Europeans to accept their conceptualization of development has highlighted the regional's political economy and the question of development which has always been at variance with those of Industrialized states. The persistent neo-colonial and Washington consensus driven conceptualization and thinking which are often imposed on developing countries therefore came into very sharp focus in the context of the EPA. This, it is argued, is part of the new paradigm in Caribbean trade diplomacy which has emerged.

3.2.2 Development Cooperation?

The principles of development cooperation are reflected in Articles 7 and 8 of the Agreement. Article 7 recognizes development cooperation as a critical element of the partnership and identifies the form of cooperation anticipated by the parties as being ; financial and non financial. It outlines the rules, procedure and the sources of funding along with the purposes for which the funding should be applied. The European Development Fund (EDF) is the main source of funding. However Member States of the EU are identified as additional sources of funding through their National Budgets and aid for trade initiatives and each Member State will also facilitate additional funding through other donors²⁹⁵. Funding for the EPA had been a critical area of the negotiations on which the CARIFORUM held out and the EU made concession without which no agreement would have been reached. While, Article 8 identifies the priority for cooperation to include technical assistance to build human, legal and Institutional capacity. Fiscal reform, support for private sector and enterprise development, enhancing interactional competitiveness to CARIFORUM firms and diversification of CARIFORUM economies are priority areas for assistance.²⁹⁶ These are the overarching priorities of the agreement., while it anticipates the establishment of a Caribbean Development Fund through which funding for implementing the EPA can be channelled independent of support from the EDF.

²⁹⁵ Article 7(3) (5) and (6) CARIFORUM-EU.EPA.

²⁹⁶ Article 8 (1) of the CARIFORUM-EU EPA.

The sum of Euro 165 million financing for the Caribbean Regional Indicative Program, (CRIP) under the 10th EDF and the revised Cotonou Agreement have been made available to complement aid for trade contributions by Member States of the European Union (EU).²⁹⁷ This is very important to the CARIFORUM States, for which they pressed the Europeans and were willing to walk away from the deal if additional sources of support were not offered by the EU. The burden of adjustment under the EPA would be too much for them to bear. It was this offer to assist the region which found favour at the Montego Bay meeting which helped to pave the way for the conclusion of the Agreement; because following up on the commitment given by Commissioners for Trade and for Development, the EU published its aid for trade support for the EPA; which identified how the EU would assist the ACP regions under Development Cooperation. So, in addition to an increase in the EDF allocation in the 10th EDF, the Commission undertook “to work assiduously with the Member States to ensure that a range of 5% of the increase in EU trade related assistance will be allocated to ACP countries when the target of £2 billion per annum is realized by 2010.”²⁹⁸ However, the allocation under the CRIP will be based on the strategies and priorities set at the regional level to effect implementation of the agreement. This procedure will have to be replicated at the national level in order for the allocation to be made to a particular country in the region. The allocation therefore will depend on the country’s strategies for implementing the agreement. This approach provided substance to the issues of taking ownership of the EPA to foster sustainable development as particularized in Article 3 (b) of the agreement, which states that “..decision-taking methods shall embrace the fundamental principles of ownership, participation and dialogue.”

²⁹⁷ Part IV, Joint Declaration on Development Cooperation. Annex 4 sets out procedure for programming resources under the Agreement.

²⁹⁸ The communication from the commission to the Council and the European Parliament. Brussels, 23rd of October 2007. Com (2007) 635 Final.

3.3 Part II: Trade and Trade Related Matters

The Broad Structures, processes and mechanism through which CARIFORUM States and the EC will cooperate to eliminate barriers to Trade are addressed in this section of the agreement commencing with trade in Goods under Title I which covers seven chapters; followed by Title II, which deals with Investment, Services and Commerce covered in a further seven chapters, Title III which deals with current payments, Capital movements and Title IV dealing with Trade-Related Issues are covered in six chapters.

3.3.1 Rules of Origin (RoO)

Part two of the agreement addresses the broad framework of trade in goods under title I which sets up the preferential trade arrangement between both parties. The content of Rules of Origin (RoO) is very important to industrial manufacturing base of the region. It is the first fundamental issue outlined. The agreement provides preferences for goods originating in the CARIFORUM States. Article 10 defines the purposes of the Rules of Origin and their broad principles of application based on the “development needs” of the CARIFORUM States. The rules are more precisely defined in Protocol One and incorporate the elements of Special and Differential Treatment (SDT). “..Originating Products” are defined as “products wholly obtained in the EC party within the meaning of Article 6 of the Protocol”, or incorporating materials which have not been wholly obtained there, providing that such have undergone significant working or processing in the EC party within the meaning of Article 7, this is also applicable to the CARIFORUM Party.²⁹⁹ While the majority of the CARIFORUM Economies do not boast industrial manufacturing base, States such as Trinidad & Tobago, the Dominican Republic and to a lesser extent Jamaica enjoy some degree of manufacturing for domestic consumption and export and therefore stand to benefit from these Rules .

²⁹⁹ Article 2 (1) (a) (b). Article 2 (2) (a) (b) and 3.

The degree of processing which will render the material to have undergone substantial work or processing however is very important to the region's Industrialization, because for the purpose of Protocol One; regional market is treated as a single market, even where the processing is done in an individual territory, or partly in one and partly in another.³⁰⁰ While Article 8 disqualifies certain operations as not meeting the status of originating products notwithstanding the provisions of Article 7. It sets out six (6) conditions for disqualification which includes "husking, partial or total bleaching, polishing, and glazing of cereals and rice". This provision seems to be a direct response to perceived loophole in the Lomé and Cotonou Rice Protocols with respect to the Rules of Origin, which has given rise to the rice dispute cases in the EU between 1992 and 1995³⁰¹ involving production of processed rice in the Netherland Antilles. But more importantly, Article 4 which deals with the question of Cumulation is the deal the Caribbean was seeking to secure from the very early stages of the negotiation. It was always the view of the region and the wider ACP States that the restrictive Rules of Origin which existed under the Lomé and Cotonou never favoured industrialization of the South; and is part of the reason for the failure of the ACP States to build an effective and competitive export manufacturing base and give effect to the purposes of the Suva Declaration of 1977.

Article 4 established the mechanism for cumulation which allows the region to cumulate or negate input coming from other countries and treat them as if they were from that specified country. The essence of the Article 4 is that cumulation can take place within each CARIFORUM States and also across the region. Another essential feature of the Rules of Origin and the cumulation factor is found in Article 2 paragraph (3) of the

³⁰⁰ Ibid.

³⁰¹ Antillean Rice mills NV, Trading and Shipping Company. TER Beek BV, European Rice Brokers AVV, Alesie Curacao NV and Guyana Investments AVU vs. Commission of the European communities. Joint cases T-480/93 and T.483/93. European Court Reports 1995 II.02305. There the court had to examine the issues of Safeguard measures, Application for Annulment and Admissibility arising from the importation of Rice from Guyana and Surinam by Corporation in the Netherland Antilles in the Caribbean and semi*- processed the price before selling it in the European market. The French complained; that such import was affecting the market and sought to impose safeguard measures.

protocol which makes input coming from other trading partners in the EU, or its Overseas Countries and Territories (OCTs) or any other ACP country be eligible for cumulating, and even more importantly, Article 5 allows for input from certain Latin American countries³⁰² by request may be eligible for cumulating. These improvements have opened-up possibility for deeper economic intergration in the region and also to widen the process to include Latin America.

Up to 70% input can be eligible for cumulation, but while the EC partners can have cumulating from its OCTs, EC and ACP States; it cannot have accumulation from Latin America. The arrangement with the Caribbean seems to be a special form of special and differential treatment between the CARIFORUM and the ACP States. This is very important to the development of South-South trade, which was stifled under the previous Rules of Origin arrangements. The CARIFORUM States had placed great emphasis on the Rules of Origin beginning with the all ACP phase and this issue was among the first that was placed on the negotiating table by the CARIFORUM States. The region needed to craft the Rules of Origin early with the intention of influencing the discussion, because it did not want the EC to push them on those issues. In this area the CARIFORUM provided leadership of the all ACP level and carried it over to the regional negotiations³⁰³. However, so important was the issue that the region was eager to settle the Rule of Origin question even before it embarked on market access.³⁰⁴

The conventional view among CARIFORUM policy makers and trade strategists is that the Rules of Origin under Lomé and Cotonou agreements was a fundamental contributor to the lack of performance by the ACP countries in improving their export of

³⁰² See Annex VIII of Protocol I countries include: Colombia, Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela.

³⁰³ Interview - Neville Totaram, Georgetown Guyana June, 2009.

³⁰⁴ Ibid.

processed food, and manufacturing in general for export to the EU³⁰⁵, because those Rule of Origin (RoO) under the previous conventions were quota and cumulation restrictive. The strategy of the CARIFORUM States in the EPA negotiation was to achieve a degree of cumulation under the Rules of Origin which would enhance the region's chances of diversifying its economies in food processing and light manufacturing for export for which it could develop competitive capacities in light of the DFQF commitments of the EU. This is an area in which the EU would have preferred that the CARIFORUM States sought full asymmetry, but the Region did not, because to do so would have given the EU greater access to the CARIFORUM markets and the mechanism to administer those rules would be too complex. So, the region pressed for cumulation³⁰⁶ and the EC conceded but maintained limited application of cumulation in the case of rice and products with sugar content.³⁰⁷ This limitation did not sit well with Trinidad and Tobago which is a competitive exporter of confectionary; and further give credence to the argument that the EU wanted the region to continue as a supplier of primary products³⁰⁸. However, Guyana which is the regions only rice producer for the EU is significantly affected by the limitation on cumulation for rice based products.

Under the Rules of Origin, the CARIFORUM benefits in the area of clothing manufacturing, because the region secured concessions for the EU to adapt similar rules to those found in the United States- African Growth and Opportunity Act which address the issue of derogation for lesser developed countries which allows for knitted and woven clothing to be produced from material which have not being wholly originating in the producing country, but still retain the wholly originating status. The.

³⁰⁵ Interview Ambassador Frederico Cuello New York May 15, 2009. See also Stevens, Christopher, Kennan, Jane and Meya, Mareika: "Analysis of contents of the CARIFORUM and Pacific ACP Economic Partnership Agreement and challenges ahead Final report". Commonwealth Secretariat. London. December, 2008 p. 40. [Http/www. CFTC-EAD-BCWG-208](http://www.CFTC-EAD-BCWG-208) Final Report. pdf. (December 1, 2009).

³⁰⁶ Economic commission for Latin America and the Caribbean. (ECLAC) LC/CAR/L.181. 26 Nov. 2008. p. 8.

³⁰⁷ Annex X to Protocol I of the EPA.

³⁰⁸ ECLAC. LC/CAR/L.181. Nov. 26, 2008. p.8.

These provisions are far more enhanced than what the Dominican Republic received under CAFTA.³⁰⁹ However, the derogation is not automatic, it must be applied for and the value added must not exceed 60%. For example, take the case of tobacco, up to 4% of its manufacturing content can be imported into the region and the finished product is qualified under Rules of Origin. However the sugar content restrictions will be reviewed within 3 years, while the overall regime will be reviewed in five years.

3.3.2 Customs Duty

The EU had offered Duty Free Quota Free (DFQF) access to its market beginning January 2008, for the region's export except for sugar and rice.³¹⁰ In the case of sugar, there is duty free quota free access commencing in October 2009. What had obtained up until then, were the provisions of the Sugar Protocol under Contonou Agreement which gave guaranteed price and quotas for the various ACP suppliers. However under the Joint Declaration of the Final Act of the Agreement, if during the operation of the Sugar Protocol, there is any short fall from any of the individual CARIFORUM States on their quota, that short fall will be allocated to the other CARIFORUM States. But even though the region is now free to negotiate directly with the EU's sugar processors of raw sugar which was not the situation prior³¹¹ The St Kitts, a Member of the CARIFORUM Group was severely impacted by the new arrangements as it was forced to cease production of sugar for export after over three hundred years of production and its quote has been re-allocated to the CARIFORUM States. While rice has been granted Duty Free Quota Free access to the EU market as of January 1, 2010. These were the essential features of the commitment under the Tariff liberalization for imports from CARIFORUM countries. The approach to liberalization sought to maintain the principle of special and differential treatment for CARIFORUM States. So, while States must reduce tariffs, the period for reduction is staggered and has different variations in the

³⁰⁹ Interview- Ambassador Frederico Cuello, New York, May 15, 2009.

³¹⁰ Article 15, CARIFORUM-EU-EPA.

³¹¹ Interview- Ambassador Derrick Heaven, Chairman of the Sugar Industry Authority, Jamaica May. 2009, Kingston Jamaica.

degree of liberalization. The Member States of the Organization of Eastern Caribbean States (OECS) and Haiti for example have different levels of commitment from the rest of CARIFORUM³¹². This approach gives comfort to the Variable Geometry within the region which provides for Special and Differential treatment of the region's designated LDCs. There is also a three-year moratorium while the phased reduction on tariffs is applicable to products with high revenue sensitivity or falls in the category which requires protection from competition posed by liberalization of imports. The CARIFORUM States were prepared to accept no less because of their vulnerabilities and potential revenue loss.

There was also the exclusions list of sensitive goods on which duties will still be imposed. So approximately 13.1% of food items imported from the EU will continue to attract import duties. The extreme sensitivity implication for the region's budget support was being exposed, So, in developing its exclusion list and also to apply rates base on revenue considerations, the region had listed all 5,224 sub-heads in the EU Harmonized System (HS) 2002 nomenclature and further indicated how these items would be dealt over 25 years. For example, in 2009, a 52.8% tariff reduction. In 2013, tariff were to be reduced by 56%, by 2018 the percentage will be 62.1%, by the year 2013 it will be increased to 82.7% and by 2028 and 2033 from 84.6% to 86.9% respectfully. The advantage for CARIFORUM States is that this reduction would not be front loaded in order to reduce the impact on revenue loss in the short-term. The first reduction of 52.8% is with respect to goods already zero rated, so he impact will be negligible³¹³. See Table 8 for CARIFORUM's liberalized and excluded goods and table 9 for its liberalization commitments by country.

³¹² Article 17 provide that "in light of the special developmental needs of Antigua and Barbuda, Belize, the commonwealth of Dominica, Grenada, the Republic of Guyana, the Republic of Haiti, St. Christopher and Nevis, Saint Lucia, St. Vincent and the Grenadines, the parties may decide ...to modify the level of custom duties stipulated in Annex III, which may be applied to the products from the EC party upon its importation into the CARIFORUM States".

³¹³ Interview- Henry Gill, CRNM, Bridgetown, Barbados, June 10, 2009.

Table 9: CARIFORUM Tariff Liberalization Commitments by Country

Country	0 yr	5 yr	10 yr	15 yr	20 yr	25 yr	Excl
Antigua and Barbuda	7%	7%	25%	35%	2%	2%	22%
Bahamas	32%	2%	13%	34%	3%	2%	13%
Barbados	48%	0%	2%	24%	1%	1%	23%
Belize	13%	6%	10%	27%	1%	3%	39%
Dominica	17%	3%	18%	27%	2%	1%	27%
Dominican Republic	53%	8%	5%	21%	3%	5%	5%
Grenada	9%	14%	20%	25%	2%	3%	28%
Guyana	53%	1%	7%	18%	2%	1%	18%
Haiti	60%	0%	1%	7%	2%	4%	27%
Jamaica	56%	0%	1%	26%	2%	1%	13%
St. Kitts and Nevis	18%	16%	16%	17%	2%	2%	29%
St. Lucia	38%	0%	4%	22%	5%	2%	29%
St. Vincent and Grenadines	8%	7%	14%	30%	2%	2%	37%
Suriname	9%	9%	20%	27%	2%	3%	28%
Trinidad and Tobago	73%	0%	1%	18%	0%	1%	6%
CAR	53%	3%	5%	22%	2%	2%	13%

Source: CRNM www.crn.org downloaded Dec. 12, 2008

Note (1) at entry into force of the agreement, CARIFORUM commits to liberalize 52.8% comprising the following elements:

42% of CARIFORUM imports currently duty-free;

9% to be liberalized by the Dominican Republic (CARTA-party); and

1.8% to be liberalized on tariff lines that are currently low (nuisance tariffs).

Note (2) the average share of CARICOM MDCs and LDCs imports excluded from tariff liberalization are 15 and 30%, respectively.

This is an area which had caused the region grave difficulties in achieving because of the “Variable Geometry” in the region, and the very extensive exclusion list prepared by each territory within the Region. These liberalization schedules are intricately linked to the Most Favoured Nation (MFN) clause of the Agreement which seems to provide some flexibility under the review process because, it is stipulated in Title I, Article 16.6 of the Agreement that during the implementation of the agreement if serious difficulties arise due to imports of a given product, then it is permissible to review the schedule of custom duty reduction by the CARIFORUM-EC Trade and Development Committee to change the schedule or eliminated it. However, “If the CARIFORUM-EC trade development committee has not taken a decision within thirty days of an application to review the time table, the CARIFORUM States may suspend the time table provisionally for a period that may not exceed one year”.³¹⁴ This provision seems to give further cohesiveness and some flexibility within the schedules as this type of safeguard measure is essential for Small and Vulnerable Island economies so highly susceptible to external shocks. Other duties and charges and export duties are prohibited.³¹⁵

The general MFN clause is prohibitive as neither Europe nor the CARIFORUM States can unilaterally give to another group of States or individual country any term more favourable than those terms given to either party under this Agreement³¹⁶. This self restraining clause is mutual in scope and application. What this means is that while Europe continues to negotiate with third countries, whatever it gives to those countries or state which is more favourable than what it gave to the CARIFORUM States it is obliged to give to the CARIFORUM States. The converse holds true for the CARIFORUM States. Therefore, while there is no General MFN clause in the Agreement, the EC party is obliged to give to the CARIFORUM States the same treatment, if it were to conclude an FTA after the coming into force of the EPA and gives

³¹⁴ Article 16.6. Article 17.

³¹⁵ Article 14.

³¹⁶ Article 19 (5).

more favourable treatment to that third country than it gives to the CARIFORUM States. However, the arrangements seem not to operate automatically as they relate to the CARIFORUM States vis-à-vis the EC, but the granting state would be required to seek consultation with the EC party to give more favourable terms to a third party, but in the case where Europe is granting such more favourable terms to a third country, then the benefits automatically passes to the CARIFORUM States. The treatment however, only applies to matter covered under the chapter on custom duty³¹⁷. The CARIFORUM States are obliged to give to the EC party the same treatment it give to a major trading economy or Group of country in and FTA concluded after the EPA in which the treatment given under that FTA is better than that the CARIFORUM States give to the EC under the EPA.³¹⁸ So, while the restriction applies to treatment given to any third party by the EC party in a future EPA, the CARIFORUM States' obligation is limited to Group of States or an individual State with a share of 1% or more of world trade. Article 4 stipulates that for the purposes of this provision that group of States or an Individual States is defined as "major trading economy"³¹⁹. Because is not difficult to determine which country or group of countries that this is aimed at, what seems clear is that no Caribbean basin country is qualified. It is therefore contended that the real aim of the EU's insistence on this provision is to focus on the potential threats of emerging markets of Brazil, China and India and the its main trading partners; the United States. However, the real challenge for the CARIFORUM States rests in the definition of "major trading economy" and whether this applies to South Africa which is an ACP Member State and the impact this may have on its ability to give special treatment to South Africa in the future without offering same to the EU. It is therefore important to observe that from the

³¹⁷ Article 19 (1).

³¹⁸ Article 19 (2).

³¹⁹ A "major trading economy" means any developed country, or any country of territory accounting for a share of world merchandise exports drove*one (1) percent in the year before the entry into force of the free trade agreement referred to in paragraph 2 or any group of countries acting individually, collectively or through an free trade agreement accounting collectively for a share of world merchandise exports above one and a half (1.5) percent in the year before the entry into force of the free trade agreement referred to in paragraph 2." Article 19 (4).

CARIFORUM's prospective the EC cannot give any more favourable treatment to a third country than the Duty free Quota Free access which it gives to the CARIFORUM exports to the EC under this chapter. The only products from the region which do not have this type of access are sugar and rice at the time of the coming into force of the CARIFORU-EU Agreement. However, it seems possible for CARIFORUM to conclude a Free Trade Agreement in which it could offer better treatment to a third country or group of countries that qualifies under Article 19 (4). But the region's major trading partners are the EU, Canada and the United State of America and it seems very unlikely that they would be giving any better treatment of goods imported from Canada and the USA than those of the EC party.³²⁰ The MFN clause was one of the most controversial and difficult to agree because it was felt by some that the region was giving up too much and that it is restricting itself from further South- South development³²¹. However, the counter argument is that it is very unlikely that any other major trading partner will be giving to the CARIFORUM State. Duty Free Quota Free entry of its exports into their country to prompt the CARIFORUM States to offer more favourable terms to them than what the region has given the EC³²².

³²⁰ The Caribbean trade with the Canada CARIBCAN and with the US, under the CARIBBEAN Basic Initiative (CBI) both of which give preferential treatment to Goods imported from the Caribbean. These are not Free Trade Agreements. The Dominican Republic Trades with the US under CAFTA, which is a Free Trade Agreement.

³²¹ Main Caribbean critics of this clause are: Sir Shirdath Ramphal, Interview Barbados June 2009, and Anthony Hylton M.P. EPA: The opposition's view point. Sunday Gleaner, March 30, 2008 and EPA: Why the opposition walked out. Sunday Gleaner September 7, 2008. Sir Ronald Saunders: Europe's ploy to secure EPA signing coming to light. The Jamaica Observer, Sunday Oct. 5, 2008. Thomas Clive. CARICOM perspective on the CARIFORUM-EC, Economic Partnership Agreement. http://www.normongiven.info/up-context/upload/2008/05/clive-thomas_caricom-perspective-on-the-cf-ec-epa-may-2008 (November 24, 2008), Norman Given interview, June 15, 2009, Port of Spain Trinidad & Tobago, Sir Alistair McIntyre. Interview Nov. 2008, Kingston Jamaica, David Jessop: understanding the EPA-Most Favoured Nation Concession a danger for the Caribbean Gleaner, March 14, 2008, Brazil's statement to the W.T.O's General Council meeting on the 5th of February, 2008. See also Debate on the EPA in the Jamaica Parliament 26th of August 2008 opening statement of Hon. Robert Baugh minister of Foreign Affairs and Foreign Trade and the response of the Opposition leader Hon. Portia Simpson Miller. Hansard: proceeding of the House of representative, Aug. 26, 2008 also Professor Clive Thomas, Sir Ronald Sanders.

³²² Interview – Henry Gill, Barbados, June 10, 2009 and Sam Chandler. Barbados, June 10, 2009.

3.3.3 Protocol III

Protocol III deals with cultural cooperation and makes special provisions for Audio-Visual cooperation which are relevant to market access. Article 1 of Protocol III provides that "...the parties shall cooperate for facilitating exchanges of cultural activities, goods and services, including inter alia in the audiovisual sector". Provisions are also made for technical assistance to the CARIFORUM States to develop their capacity and implement their cultural policies and for the parties to cooperate and endeavour to facilitate the "...entry into and temporary stay in their territories of artists and other cultural professionals and practitioners from the party".³²³ This Protocol is read in conjunction with Article 139 of the agreement which creates an obligation on the parties to effectively implement treaties that protect Intellectual Property Rights and also Trade-related aspects of Intellectual Property. The agreement reinforces the parties'³²⁴ obligation to honour other international obligation in the area of Intellectual Property rights; but recognized the need for special and differential treatment in the implementation of the provisions. The time line for implementation is set for January 1, 2014, but for the more developed economies the period is 2010. However, they may apply to the CARIFORUM-EC Trade and development committee for any relief. These provisions are vital to Europe's interests because of the difficulties of monitoring and policing infringement of Intellectual Property Rights at the global level.

.Article 142 addresses the very important question of transfer of technology which is inextricably linked to innovation and intellectual property rights. The parties agree "to exchange views and information on their practices and policies affecting transfer of technology, both within their respective regions and with third countries..." The activities of each party will "...include measures to facilitate information flows, business partnerships licensing and subcontracting". The parties have undertaken to pay

³²³ Article 3 (1).

³²⁴ Article 140.

particular attention “to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries including issues such as development of human capital and legal framework”³²⁵. This is very crucial for CARIFORUM States in the context of their trade and development policies, because of the incentive to be given to institutions to transfer technology to enterprises in the region. However, the parties cannot derogate from, but must comply first with their international obligation with respect to intellectual property rights and trade- related intellectual property rights. It is therefore important to develop monitoring mechanisms to ensure that the technology being transferred is not only appropriate, but should not be obsolete.

Very importantly, the agreement offers protection for Geographical Indications permissibility to register Geographical Indications alongside relevant trade mark and places an obligation on CARIFORUM States to commence negotiation to protect geographical indications in their respective territories, no later than 1st of January 2014. This is particularly important to countries such as Jamaica that has developed the world famous Jamaican Blue Mountain Coffee brand. However, Europe faces a formidable challenge in this area in terms of its wines and other beverages.

Articles 151-163 set out the mechanism for enforcing Intellectual Property Rights wherein the parties undertake to provide measures, procedures and remedies to ensure the enforcement of intellectual property rights and to ensure also that such “measures and remedies be effective, proportionate and dissuasive and shall be applied in such manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. The important elements of these arrangements in the context of CARIFORUM’s preparedness for global competitiveness is that the EC party has undertaken to provide financial and technical assistance in developing and supporting the establishment and implementation of these measures and procedures,

³²⁵ Article 142 (1).

the standards of which are in keeping with the Trade Related Aspects of Intellectual Property rights (TRIPS) Agreement under the WTO because of the lessening of the financial burden of implementing TRIPS on the part of CARIFORUM States is very vital to their fiscal budgets.

3.4 Trade Defence Instruments

Trade defence measures are outlined in Chapter two, Articles 23-25 covering Anti-dumping and countervailing measures, multilateral safeguards and a general safeguard clause. The Articles set out the circumstances under which CARIFORUM States or Europe may impose temporary barriers to trade to include tariff measures. For example, where imports from a trading partner has increased to a level where it causes serious harm to certain industries or to the economy, it is permissible for that party to use safeguard, which are barriers to trade to prevent injury to domestic industries and the economy caused by such increased in imports. Either party is therefore permitted to adapt whether singularly or collectively “anti-dumping or countervailing measures in accordance with the relevant WTO agreement”, however, “...before imposing anti-dumping or countervailing duties in respect of products imported from CARIFORUM States, the EC party shall consider the possibility of constructive remedies as provided for in the relevant WTO agreements.”³²⁶ But, while the EC party is obliged to take such steps before imposing such measures, the CARIFORUM States are not so obliged. Further, the parties are permitted to take steps in accordance with Article XIX of the General Agreement on Tariffs and Trade 1994, with respect to Safeguards, and also in respect to Article 5 of the Agreement on Agriculture under the WTO. The imposition of any such measure shall be temporary and can only go up to a period of five years from entry into force of this Agreement.³²⁷ Subsection 2 of Article 24 provides for exceptions to give effect to the objectives of the agreement in the context of the small size of the

³²⁶ Article 23 (1) (2).

³²⁷ Article (24) (1) and (3).

economies of the CARIFORUM States. The EC party shall exclude imports from any CARIFORUM States from any measures taken pursuant to Article XIX of the GATT 1994, the WTO Agreement on Safeguards and Article 5 of the Agreement on Agriculture. The injured party may examine other solutions, and having done so may apply safeguard measures of limited duration which derogate from the provisions of Article 15 or 16 as the case may be³²⁸. The safeguard measures however, are not subject to WTO dispute provision and countervailing measures such as duties can be employed to prevent unfair competition between subsidized imports and unsubsidized domestic products. This provision is of critical importance for Caribbean food security based on the threat posed to domestic agriculture from subsidized agricultural imports

3.5 Non-tariff Measures

Articles 26-28 cover non-tariff measures including prohibition of quantitative restrictions, National Treatment of internal taxation and regulation and agricultural export subsidies. These provisions seek to reduce barriers to trade other than tariffs to include quotas, license to import or export products. They also address unfair competition between imports and similar domestic products within the domestic market.³²⁹

Discrimination against import is prohibited as the parties are obliged to apply National Treatment (NT) to all products and therefore no charges and internal taxes may be levied to imports where they are not similarly applied to similar products in the domestic market.³³⁰ Therefore, like treatment must be accorded to both imports and locally produced goods in any regulation or law affecting internal sale, offers for sale, purchase, transportation, distribution or use of product. However, the NT provisions do not prevent either party from offering domestic support to national products. In this

³²⁸ Article 25 (1).

³²⁹ Article 26.

³³⁰ Article 27 (1).

instance, the provision of the EPA slightly differs from the provisions of established International Trade Rule which accord National Treatment status for imported goods and services provided. Under these provisions, Europe shall eliminate export subsidies on all products which the CARIFORUM States have liberalized. However, the CARIFORUM States are allowed to maintain such subsidies on their products during the transition period afforded to developing countries under the Agreement on Agriculture and the WTO Agreement on Subsidies and Countervailing measures (SCM).³³¹ The Caribbean States need these safeguards to protect its domestic agriculture in light of the dismantling of the commodity protocols by Europe.

3.6 Government Procurement

The provisions dealing with public procurement are very detailed³³². This area was very important to EU's trade policy and they needed to have the area addressed in the EPA. The EC pressed very hard for market access in government procurement, but the region did not have a mandate to negotiate in this area. So, while they pressed, the region knew that Europe wanted something and so decided on a compromise.³³³ The regions expression of recognition of the need for transparency in Government Procurement procedure was as far as it was prepared to concede on the issues, specifically referring to the tender processes only. Article 165 states that the general objectives of the parties was to recognize the importance of transparency in competitive tendering for economic development with due regards being given to the special situation of the economies of the CARIFORUM States. The region's undertaking is limited to future development in the area. This approach had to be adopted because the CARIFORUM States had not reached the levels of development in this area to meet the demands of the EU neither at the regional, national nor multilateral levels. However, in

³³¹ Article 27 (1) (2) and (3).

³³² Chapter 3, Articles 165-183, covers the area of procurement.

³³³ Interview- Henry Gill CRNM June 10th, 2009, Barbados.

the spirit of compromise they allowed the EU a “foot in the door” by making the concession to undertake transparency in government procurement market access³³⁴. So, Article 167 for example addresses the scope of procurement and the need to support the creation of regional procurement markets³³⁵. The procurement is restricted to those entities included in the schedule in Annex VI and not to all government entities, and also to the value of the contract with respect to the thresholds. The parties are required to treat eligible suppliers equally in accordance with the principles of open and effective competition. While Article 168 sets out the qualification of eligible suppliers and places the obligation on the CARIFORUM States to determine the qualification of eligibility for participation in the process. The position does not seem to deal with the question of market access in government procurement, but instead it addressed the question of transparency of the process. Therefore, decisions must be taken in a transparent manner. So, government procurement was deliberately left out of the chapter dealing with market access at the insistence of CARIFORUM to make it clear that they were not making any concession to Government Procurement in the context of market access, but instead to address one aspect of government procurement limited to transparency in the process. Article 182 sets out the priorities for cooperation in this area while Article 181 provides for a three year’s review by the CARIFORUM-EC Trade and Development Committee. The EU seemed quite content with the opening created.

3.7 The Environment

The Agreement also addresses the issue of the Environment in Chapter 4, Articles 183-190. It recognizes the importance of the treatment of the environment in terms of sustainable development. The objectives for this are set out in Article 183 (1) which states *inter alia* that “the parties reaffirm that principle of sustainable management of natural resources and the environment are to be applied and integrated at every level of their partnership” in accordance with Articles 1 and 2 of the Cotonou Agreement dealing

³³⁴ Ibid.

³³⁵ Article 67 (1) and (2).

with their commitment to sustainable development. Also, for the purposes of promoting international trade and ensure sustainable development the “...parties agree that in the absence of relevant environmental standards in national or regional legislation they shall seek to adapt and implement the relevant international standards, guidelines or recommendations, where practical and appropriate”³³⁶. Article 190 sets out the importance of cooperating on environmental issues to meet the objectives while Article 88 prohibits the lowering of Environmental Standards as a means of gaining advantage. Article 89 sets up the process of consultation and monitoring through the CARIFORUM-EC Consultative Committee on Environmental issues at which the parties can make submissions written or oral with recommendations for disseminating and sharing best practices relating to environmental issues. This provision though potentially advantageous to both sides, the CARIFORUM States will only benefit, if the EU provides the necessary support for achieving and maintaining such standards. Where therefore, the region has achieved such standards, they should not be discriminated against by the EU in its dealing with third countries which have not adhered to those standards.

3.8 Social Aspects

The social aspects of the partnership are covered under chapter 5, Articles 191-196. The objectives of which are set out in Article 191 on international labour standards. It states *inter alia* that “the parties affirm their commitment to the Internationally recognized core labour standards as defined”³³⁷ under the International Labour Organization(ILO) Convention to include freedom of Association and the right to collective bargaining, abolition of force labour, the elimination of the worst form of child labour and non discrimination in respect of employment”³³⁸ These are very important Core Standards which are traditionally up held in the region because of the long

³³⁶ Article 185.

³³⁷ Article 191.

³³⁸ Ibid.

established labour movements. So, while the Article is not geared to influence and force regional governments to open new areas of regulation, it seeks to maintain International Standards to avoid unfair advantage in competitive trade. It therefore prohibits competitive advantage through lowering of core standards to encourage trade or direct foreign investment³³⁹. The CARIFORUM-EC Consultative Committee has responsibility for consultation and monitoring of the processes under this chapter³⁴⁰. Where there is an issue under consultation, the process shall not exceed three months and the parties may “seek advice from the ILO, and if this is done the process may be extended for a further three months. A dissatisfied party may request the committee of experts to examine the matter and at the end of which that committee shall submit a report to the CARIFORUM-EC Trade and Development Committee for final action.”³⁴¹ Again cooperation is needed to give effect to the objectives of the chapter. The level of cooperation required is set out in Article 196 which outlines an elaborate process and machinery to give effect to the cooperation undertaking, to include formulation of national legislation, education and awareness measures and enforcement mechanism at the national level³⁴². These provisions are important to CARIFORUM States which face competition in the agricultural sector namely in the production of banana in Central America “dollar banana” producing States. The EC must raise these issues with the Latin’s in their negotiations for Free Trade Agreement as the CARIFORUM banana Interest has complained about the low labour standards which obtain in Latin America.

3.9 Protection of Personal Data

The protection of personal data is covered in chapter 6, Articles 197-200 of the Agreement. Article 197 sets out the objective of the provision on personal data protection which places obligations on the parties to recognise their “common interest in

³³⁹ Article 193.

³⁴⁰ Article 195.

³⁴¹ Article 195 (5) and (6).

³⁴² Article 196 (2).

protecting fundamental rights and freedom of natural persons and in particular their rights to privacy, with respect to the processing of personal data,” The maintenance of “effective data protection regime is a means of protecting the interest of consumers, stimulating investor confidence and facilitating broader flows of personal data”³⁴³ is very important. The data should be collected and processed in a “transparent fair manner with due respect to the data subject”. The parties have agreed to establish appropriate legal and institutional framework for implementation of the data protection mechanism no later than seven years after the entry into force of this agreement³⁴⁴

The regime establishes priorities for cooperation which oblige the parties to acknowledge the importance of cooperation to facilitate the establishment of the regimes to give effect to the objectives of personal data protection; to include appropriate legislation, Judicial and institutional framework³⁴⁵. These cooperation activities are complementary to the general principles of cooperation outlined in Article 8 of the Agreement.

3.10 Part III:Dispute Avoidance and Settlement Mechanisms.

The dispute avoidance and settlement principles and procedures are outlined in three chapters covered in part III of the Agreement. The process of Dispute resolution is established and facilitated under a three- tier procedure outlined in chapter one, the objectives and scope of which are set out in Articles 202 and 203 of the agreement.

The objective is to avoid disputes and to settle them where they exist between the parties by arriving at mutually agreed solution, and for the parties to seek interpretation and application of the Agreement³⁴⁶. However dispute concerning development finance

³⁴³ Article 197 (1) (a).

³⁴⁴ Article 1 (b), (c) and Article 2.

³⁴⁵ Article 201.

³⁴⁶ Article 202 and 203 (1).

cooperation under Cotonou Agreement shall be dealt with in accordance with the procedure set out in Article 98 of the Cotonou Agreements. Therefore only disputes arising from Aid for trade finance and financial support from other donors outside the EDF can be accommodated under these procedures³⁴⁷. This provision seems to presuppose that the Cotonou Agreement will be in force in perpetuity or at least to 2033 when the implementation processes will be completed. Because by dividing the funding arrangements into two areas to be treated separately, suggests in some measure that the problem of funding under the EDF can only be addressed under Cotonou, yet the EDF is the key funding support for the EPA. The two systems must be reconciled for effective management of the funding arrangements for the EPA.

The provision envisages a three- prong approach to dispute avoidance and settlement namely; arbitration which includes Consultation under Article 204, Mediation under Article 205 and Arbitration under Article 206. The application of which is determined by the nature of the dispute. Where for example, there are issues of interpretation and application of the Agreement, the parties must first use best endeavours to resolve them by consultation in good faith.

In this regard, the CARIFORUM-EC Trade and Development Committee is therefore not the first line of invocation but, must be notified by means of written request copied to it. The request must be made to the other party and consultation must commence within forty (40) days of submission and are deemed to be concluded after sixty (60) days, except where the parties agree to continue. If however, there is no resolution the parties can move to mediation and where mediation fails, the parties have recourse to arbitration under Article 206.³⁴⁸

However, any dispute arising under chapter 4 and 5 of title IV must be addressed under the procedures outlined in Article 189 (3), (4) and (5) and also Article 195 (3), (4) and 5

³⁴⁷ Article 203 (2).

³⁴⁸ Article 204 (1), (2), (3) and (5).

respectively, but where such disputes fail to be resolved within 9 months they will be accommodated under their general provision.³⁴⁹ At all times these proceedings shall remain confidential.³⁵⁰ These provisions are designed to discourage matters of dispute from going to the WTO for resolution, though this path is not prohibited. However neither party to a dispute can resort to the WTO regime while its matter is before the EPA Dispute Settlement body..

3.10.1 Arbitration Procedure

The procedures for Arbitration are covered in chapter 2, which is divided into three sections. Section 1, Articles 206-209 deal with the procedures while section 2, Articles 210-214, deal with compliance with rulings of the Arbitration and section 3 deals with common provisions covered in Articles 215-223 of the Agreement.

Where the parties fail to resolve the issues through consultation and mediation, a request must be made in writing to the party against whom the complaint is made and also the CARIFORUM-EC Trade Development Committee identifying the specific issues and explains the breach.³⁵¹ A request must be made within ten (10) days after, for a panel to be established and the parties must consult on the composition of the panel which shall consist of three members.³⁵² Where no agreement is reach on the composition, by request of the parties, the chairman of the Joint CARIFORUM-EC Trade and Development Committee however, shall select the three member panel from a list established under Article 222. Where the parties agree on one or more of the members to the panel, then “any remaining members shall be selected by the

³⁴⁹ Article 206 (4).

³⁵⁰ Article 205 (5).

³⁵¹ Article 206 (1) (2).

³⁵² Article 207 (1) (2).

procedure” as set out in Article 207³⁵³. But where however, the dispute arises under chapter 4 or 5 of title IV the panel must consist of at least two (2) expertise in the matter covered under those chapters taken from a list of fifteen (15) persons from a list prepared by Joint CARIFORUM-EC Trade and Development Committees pursuant to Article 221; The effective date for establishment of the panel is the date when the three members are selected.³⁵⁴ For the purposes of a resolution, the panel shall issue an interim report and notify the parties within 120 days of its establishment. Therefore any party and any party may submit comments on any aspect of the report within 15 days of notification.³⁵⁵ Thereafter, the panel shall notify the parties within 150 days from its establishment. However, where the subject of the dispute are perishables, the ruling shall be made in 75 days from its establishment or provide a preliminary ruling within 10 days were the case so deems. The Panel may provide recommendation for compliance.³⁵⁶

3.10.2 Compliance Measures

The compliance provisions make it mandatory for each party to comply with the ruling of the panel, within the agreed time. However, such period must be reasonable but shall not exceed 30 days after the ruling. The party against whom the complaint was lodged shall notify the CARIFORUM-EC Trade and Development Committee of the time for compliance committee. However, where the parties have failed to agree on the time, the aggrieved party shall within 20 days of the notification, write to the panel to determine the time. The notice shall be served on the Joint Trade and Development Committee and the complaining party simultaneously and the Committee must respond within 30 days of the submission of the request. In arriving at its decision the panel can consider

³⁵³ Article 207 (3).

³⁵⁴ Article 207 (5) (6).

³⁵⁵ Article (208).

³⁵⁶ Article 209 (1), (2) and (3).

capacity constraints.³⁵⁷ However, where the panel is unable to reconvene, the procedure set out in Article 207 shall apply and the period for notification in those circumstances shall be 45 days from date of the submission of the request under and the time, however, can be extended by consent³⁵⁸.

3.10.3 Review Processes

Article 212 provides for review of measures taken to comply with the ruling and the party against whom the complaint is made, shall notify the Trade and Development Committee of steps or measures taken before the expiration of the reasonable time to comply with the ruling. Where however, there is disagreement on the measures taken by that party as to compatibility of the measures notified, the complaining party may request in writing that the panel makes a ruling on the matter and thereafter, the panel must notify its ruling within 90 days of the request. Where the matter is one of emergency, the period shall be 45 days and where the panel is unable to re convene, the procedure under article 207 shall apply.³⁵⁹

Provisions are made for temporary remedies in case of non-compliance. So, were non-compliance becomes an issue, the party against whom the complaint is made may offer financial compensation, but the complaining party is not obliged to accept.³⁶⁰ Consequentially, if no agreement on compensation is reached within 30 days of the expiration of the reasonable time period on the basis that the measure is not compatible, and the complaining party may, by notice to the other party entitled to adapt appropriate measures.³⁶¹ However, where the dispute involves matters under chapter

³⁵⁷ Article 210 and 211 (1), (2), (3).

³⁵⁸ Articles 211 (4) and 5.

³⁵⁹ Articles 212 (1), (2) and 3.

³⁶⁰ Article 213.

³⁶¹ Article 213 (1) and (2).

4 and 5, of title IV, suspension of trade concession shall not be an appropriate measure and the complaining party may adopt other measures within ten (10) days after notification³⁶². Therefore, the obligations which are placed upon the EC party in terms of taking punitive steps for failure to comply with a ruling show differences as compared to the CARIFORUM's rights. For example, the EC party is obliged to exercise restraint in seeking compensation or adapting appropriate measure. Further, an appropriate measure shall be temporarily applied until there is conformity, or until the parties have resolved the issues³⁶³. One peculiarity of the compliance provisions is that where the CARIFORUM States is found to be in breach of the Agreement, the EC party is not allowed to take appropriate action against CARIFORUM collectively to enforce compliance. This is a form of special and differential treatment which is very important to CARIFORUM States and therefore, appropriate measure must be aimed at the particular offending CARIFORUM State³⁶⁴.

3.10.4 Common Provisions

By mutual agreement the parties can terminate their dispute at any time and notify the CARIFORUM-EC Trade and Development Committee which will accept the agreed solution and terminate the proceedings. The rules of procedure for dispute shall be governed by the rules of procedure adopted by the Joint CARIFORUM-EC Council within 3 months of the provisional application of this Agreement³⁶⁵. Article 217 deals with the flow of information and technical advice available to the panel. The panel is not restricted in getting information from whatever available source it deems appropriate to address the matters before it, including the opinions of expertise as deemed appropriate and it shall interpret the rules in accordance with customary rules of interpretation of

³⁶² Ibid.

³⁶³ Article 213 (3) and (4).

³⁶⁴ Article 213 (2).

³⁶⁵ Article 215 and 216.

public international law³⁶⁶. The panel shall endeavour to take decision by consensus, but if not by majority. However, the minority opinion shall not be published.³⁶⁷ The ruling of the panel shall be made public through the CARIFORUM-EC Trade and Development Committee, but, by its own decision may decide not to do so³⁶⁸.

3.10.5 Approved list of Arbitrators and their functions

The CARIFORUM-EC Trade and Development Committee shall within three months of the provisional application of this agreement, establish a list of fifteen (15) Arbitrators who are willing to and available to serve as arbitrators³⁶⁹. Once established, the list shall be maintained at that level and these arbitrators are required to be of specialised knowledge or experience in Law and International Trade³⁷⁰. The procedure for selecting the Arbitrators is not defined nor the source from which they will be drawn. Article 222 prohibits any arbitrator from adjudicating disputes concerning a signatory States right and obligation under the Agreement setting up of WTO. However, recourse to the dispute settlement provisions of this Agreement shall not be prejudicial to any action taken under the WTO including dispute settlement. However, proceeding cannot run concurrent both of the WTO and under this Agreement. A proceeding must be completed in one forum before it can be instituted in another, and the decision of either body is mutually exclusive.³⁷¹ Time for the purposes of these proceedings is calculated

³⁶⁶ Article 219.

³⁶⁷ Article

³⁶⁸ Article 220 (2).

³⁶⁹ Article 221.

³⁷⁰ Article 221 (2).

³⁷¹ Article 222 (1) (2) and (3).

in calendar days from the day following the act or fact to which it refers however, the parties may mutually agree to an extension of time.³⁷²

3.11 Part IV: General Exceptions

Part IV of the Agreement deals with the General exceptions under Articles 224-226 which outlines the conditions and circumstances where a contracting party namely the CARIFORUM or EU can derogate from terms of the Partnership Agreement. Any such derogation however, must not be arbitrary or unjustifiable discriminatory against the other party, but “nothing in the Agreement shall be construed to prevent the adoption or enforcement by the EC party, the CARIFORUM States or a signatory CARIFORUM state of measures which are geared to protect the public security and morals or maintain public order”³⁷³. The exception also applies to action taken in protection of human, animal or plant life or health. In addition to six other conditions outlined in this paragraph and for reasons of security as outlined in Article 226, if there is any inconsistency between this agreement and any convention dealing with these issues of general protection, the to the extent of the inconsistency, the convention shall prevail.

3.12 Part V : Institutional Provisions

The Agreement established four main Institutions to facilitate the objectives of the EPA which follows a similar structure established under the Cotonou Agreement namely: (1) The joint CARIFORUM-EC Council which is the premier Institution, (2) The CARICOM-EC Trade and Development Committee which is the second highest Institution, (3) The CARIFORUM-EC Parliamentary Committee and (4) The CARICOM-EC Consultative Committee. Their primary responsibilities are delegated by the CARIFORUM States and the EC to implement the Economic Partnership Agreement (EPA).

³⁷² Article 223 (1) and (2).

³⁷³ Article 224 (1).

3.12.1 The Joint CARIFORUM-EC Council

Article 227 establishes the Joint CARIFORUM-EC Council with responsibility to oversee the implementation of the Agreement. It will meet at the Ministerial level periodically, but not to exceed two (2) years and in extraordinary session when required and so agreed by the parties. The Joint Council shall function without prejudice to the Council of Ministers at the ACP level under the Cotonou Agreement. It may address trade issues of mutual interests whether of a bilateral, multilateral or international nature³⁷⁴. The council shall establish its own rules of procedure and shall comprise of Members of the Council of the European Union and the European Commission and representatives of the CARIFORUM States³⁷⁵. The chair shall sit alternately and issue periodic reports on the operations of the Agreement to the Council of Ministers at the ACP level under Article (15) of the Cotonou Agreement.³⁷⁶ The decision of the Joint CARIFORUM-EU Council is binding and it is also empowered to makes recommendations. The parties may agree to act collectively and in such circumstances the Joint Council may take decisions by mutual agreement³⁷⁷. The Joint Council is a very important Institution in the context of the overall relationship because, while it sits at the apex of the institutional framework of the EPA it interfaces at the regional level with COTED, at the ACP level through the Council of Ministers and at the multilateral level with the Group of 77 at the WTO.

So, while the EU had rejected the ACP's demand at the all ACP phase for there to be established a joint monitoring committee to coordinate activities at the multilateral level, the EU, has through the authority of the Joint CARIFORUM-EU Council established the linkages necessary to coordinate activities for cooperation at the multilateral level.

³⁷⁴ Sect. 227 (1), (2).

³⁷⁵ Articles 228 (1), (2) and (3).

³⁷⁶ Article 227 (4).

³⁷⁷ Articles 229 (1), (2), (3) and (4).

Prima facie, this mechanism seems to create an advantage in favour of Europe, because although it is a joint body, the more powerful partner will be exposed to almost all of the inner workings of the regional configuration, but the opposite may not be equally so, because the ACP States will not as a matter of course or right be able to impact EU's decision making processes in the wider context of the global political economy and Europe's agenda.

3.12.2 The CARIFORUM-EC Trade and Development Committee

Article 230, establishes the CARIFORUM-EC Trade and Development Committee with responsibility to assist the Joint-CARIFORUM-EC Council in the execution of its duties. The body is comprised of representatives from both Parties at the senior official's level. Unlike the Joint Council, its rules of procedure are not determined by the committee itself, but instead such rules of procedure are established by the Joint CARIFORUM-EC Council. However it's chaired will sit alternately for a period up to one year and the committee shall report to the Joint CARIFORUM-EC Council.

The committee is the main administrative body within the architecture of the CARIFORUM-EC Institutional framework. It has regulatory and decision making powers in trade dispute, responsible for monitoring the implementation of the Agreement and also the day to day operations of the entire regime to ensure that the objectives of the EPA are met.³⁷⁸ Further, it has the power to appoint sub- committees to assist its function. In addition to its regulatory functions, the committee also has powers of enforcement of its regulations and decisions.

³⁷⁸ Article 230 (1), (2) and (3).

3.12.3 CARIFORUM-EC Parliamentary Committee

The CARIFORUM-EC Parliamentary Committee is comprised of European and CARIFORUM Parliamentarians who will meet and exchange views and facilitate cooperate with the Joint Parliamentary Assembly of the ACP and EU established under Article 17 of the Cotonou Agreement. The committee shall be chaired alternately and unlike the Trade and Development Committee, this body of politicians is empowered to set their own rules of procedure and also has the authority to request and receive information from the Joint CARIFORUM-EC Council and it shall be informed of the council's decisions and recommendations. It can also make recommendations to the Joint CARIFORUM-EC Council and the CARIFORUM-EC Trade and Development Committee³⁷⁹.

3.12.4 Special Committee on Custom Facilitation

The Agreement provides for the establishment of a Special Committee on Custom Facilitation to deal with Custom procedure and commitments and monitor the provisions of the Rules of Origin of Origin (RoO).

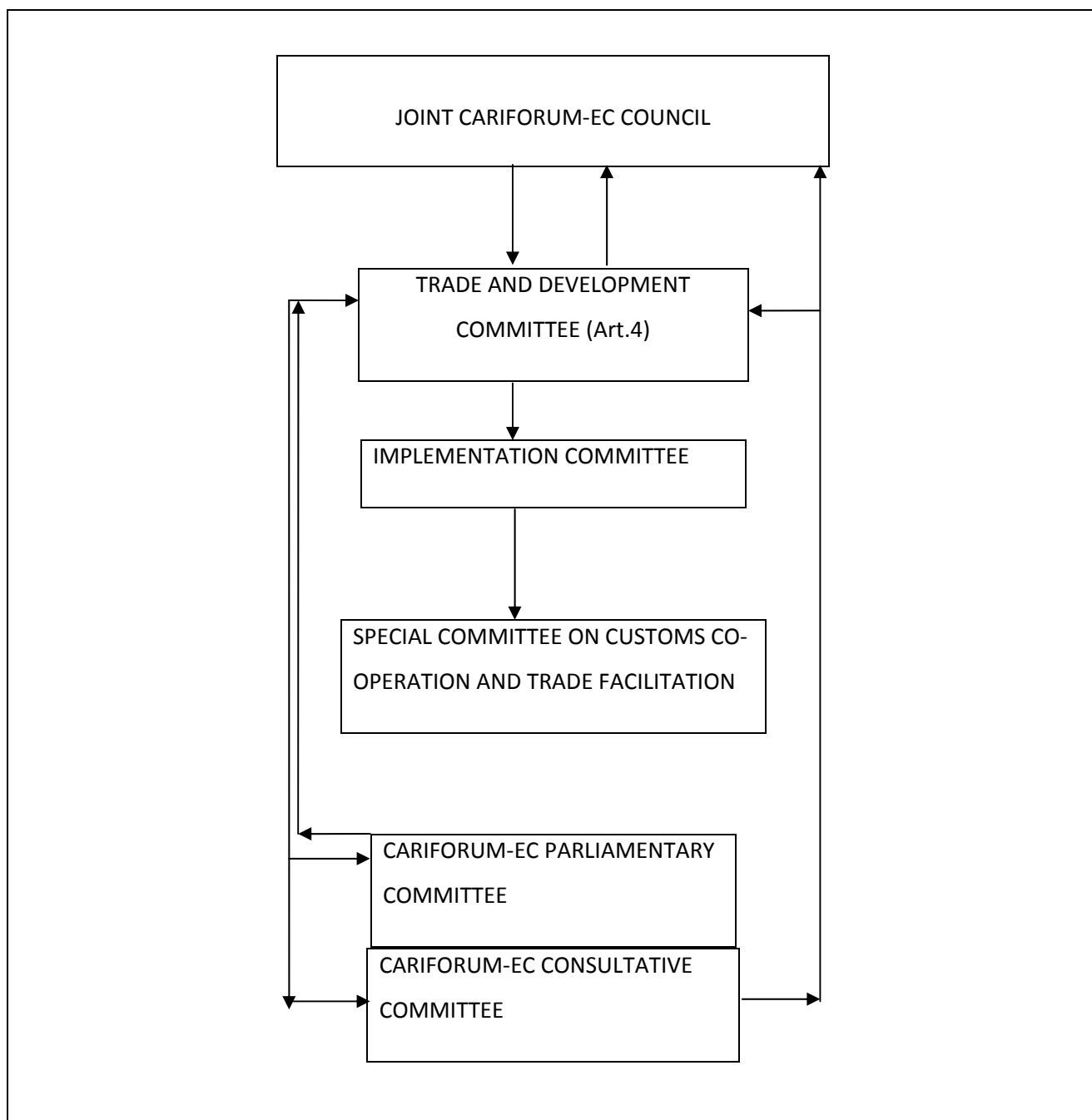
3.12.5 CARIFORUM-EC Consultative Committee

The CARIFORUM-EC Consultative Committee is established under Article 232 of the Agreement to assist the CARIFORUM-EC Council in promoting dialogue between representatives of civil society organizations with regards to the relationship between the CARIFORUM and EC parties. It may make recommendation to both the Joint Council and the Committee for Trade and Development.³⁸⁰ The rationale for its establishment is to have an input from all stake holder at all levels in the implementation of the Agreement. See Table 10 for an explanation of the flow of information and the linkages within the CARIFORUM-EC Institutional framework.

³⁷⁹ Article 231 (1) (2) (4) (5) (6) and (7).

³⁸⁰ Article 232 (1) and (5).

Table 10: Organizational Structure of CARIFORUM EC Institution



Source: Researcher's configuration using information from the text of the EPA

I3.13 Part VI: General and Final Provisions

The General and Final Provision of the Agreement are futuristic in the nature of facilitation of arrangement under the Agreement. These provisions are captured in Articles 233-250 in which the parties to the agreement are defined. The EC party is the European Community and its member States and the Fifteen CARIFORUM states singularly, though acting collectively by agreement³⁸¹.

Article 234 deals with the coordination and exchange of information to ensure the effective implementation of the Agreement while Article 235 addresses the question of transparency and places obligation on each party who shall ensure prompt publication and notification of any Law, regulation, procedure and administrative ruling made regarding any matter covered under this agreement³⁸². Article 238 deals with the obligations to foster dialogue on issues of finance and tax policy and administration. The parties agree to collaborate in the fight against illegal financial activities to include corruption, money laundering and terrorist financial and among other things organized transnational crime³⁸³.

Article 238 which deals with regional preferences has been the most difficult and controversial area to have been resolved in the negotiations. It acknowledges the “variable geometry” of the Regional integration movement and the CARICOM Single Market and Economy (CSME). It states *inter alia* that “nothing in this agreement shall obliged a party to extend to the other party any more favourable treatment which is applied within each of parties as part of its regional integration process”³⁸⁴. CARIFORUM States are obliged to extend to each other whatever advantage it grant to

³⁸¹ Article 233 (1) and (2).

³⁸² Article 234 (1).

³⁸³ Article (237).

³⁸⁴ Article 238 (1).

Europe on all duties with a zero rate with immediate effect and between CARICOM States and the Dominican Republic, and within one year between the larger territories MDC's of CARICOM and the Dominican Republic with respect to all other goods, and within two years between the smaller States LCDs of CARICOM and the Dominican Republic on all other goods. Haiti has up to five (5) years to make the adjustments³⁸⁵. Article 239 deals with the outermost regions of the European Community and its trade relations with the CARIFORUM States and leave open the possibility of including them in the EPA ³⁸⁶in the future, while Article 240 deals with balance of payments difficulties and State practices and non-discriminatory trade practices. Article 241 addresses the relations between the Cotonou Agreement and the EPA with respect to travel-related measures, and Article 242 focuses on the relations with the WTO. The parties are obliged to act in a manner consistent with the WTO arrangements.

Articles 243-250 deal with the issues of entry into force, duration, territorial application, and accession of new EU member State, accession of other Caribbean States, Authentic text and the Annexes respectively. The Agreement is of indefinite duration, but can be denounced in writing six months after notification³⁸⁷ and shall be applicable to only the territories in which the treaty establishing the European Community is applicable and in the signatory CARIFORUM States³⁸⁸. The agreement establishes a long-term relationship between both sides as compared to the five years duration of the Lomé Convention. Europe had pushed to make Lomé an agreement of a much longer duration. However it was the ACP States which never wanted a longer-term arrangement and opted for an agreement for a period of five years.

³⁸⁵ Article 238 (3) (I) (II) (III).

³⁸⁶ The Outermost Regions of the European Community includes the Overseas countries and territories (OCTs) of European States within the Caribbean namely: Anguilla, Bermuda, The British Virgin Islands, The Cayman Islands, Montserrat, and the Turks and Caicos (UK); French Guiana, Guadeloupe, Martinique and Saint Martin, (FRENCH) Aruba, Bonaire, Curacao, Saba, Saint Eustatious (Dutch).

³⁸⁷ Article 244 (1), (2) and (3).

³⁸⁸ Article 245.

3.14 CARIFORUM Liberalization

There is an exclusions list with an extended phasing-out period up to twenty five (25) years for some sensitive products imported by CARIFORUM States³⁸⁹. However, the Dominican Republic (DR) has granted to the EU better conditions of liberalization than the other CARIFORUM States because of its free Trade-agreement with the United States. Its commitment of liberalization offer was therefore more generous when compared to the CARIFORUM States. The CARIFORUM States have benefited from the liberalization commitment made by the Dominican Republic as it is through that commitment that the group was able to satisfy the WTO compatibility requirement for substantially all Trade³⁹⁰. This level of exclusion bears benefit for the CARCOM States in two materials regards. Firstly, to meet their policy on food security and protect the vulnerable small farmers in the various CARIFORUM farming communities and secondly, to create the opportunity for Agro- Industries to develop and also for small manufacturing to build capacity and efficiencies to complete in the global market place.

The extent of CARIFORUM's reliance on collection of revenue from other duties and charges to include discriminatory levies and surcharges over and above the regular custom duties have been address in a manner to lessen the burden of adjustment through a standstill provision (moratorium) followed by the phasing out of such charges over a period of seven (7) years after signing of the Agreement and for final elimination within 10 years. However, where export duties exist, those are eliminated immediately except for Guyana and Suriname which have a limited period to eliminate those practices.

The EU's liberalization commitment is for Duty Free Quota Free access (DFQF) for all products except Rice and sugar. The rice regime imposed a two year transition up to

³⁸⁹ This is a non-exhaustive list of some sensitive products to include Agricultural products, fishery products, food preparations, beverages, ethanol, rum, vegetable oil, chemicals, furniture and apparel.

³⁹⁰ Interview – Henry Gill, CRNM, Barbados, June 10, 2009.

the 31st of December 2009 with a DFQF access of 250,000 tonnes which is an increase of 100% over the previous allocation with the removal of the quota regime. However, unlike rice which was not subject to the various challenges at the WTO sugar though benefiting from (DFQF) in October 200. It also has a transitional automatic safeguard mechanism which will last up until the 30th of September 2015. Under the Protocol, CARIFORUM States have received an additional 60,000 tonnes of sugar at zero duty from October 1, 2008 to September 30, 2009 of which 30,000 tonnes go specifically to the Dominican Republic (DR) which had no preferential treatment under the Sugar Protocol and any shortfall under the Sugar protocol will be reallocated for redistribution within the CARIFORUM region. The arrangement for sugar also addressed the price mechanism which guarantees that the price paid for CARIFORUM sugar would not be less than 90% of the EU reference price for a period of three years commencing October 1, 2009.

Infused into the Agreement of a surveillance mechanism for sugar to deal with, attempts at trade circumvention of the allocation during the period; January 1, 2008 to 30th of September 2015. Therefore, where for example product with sugar content has shown import increases of 20% or more in any twelve month's period consecutively, the Commission is empowered to analyze the pattern and where necessary may suspend the preferential arrangement for the affected products. The DFQF benefit Caribbean sugar exports by allowing them the freedom to negotiate prices directly with the commodity house in the UK as with operators of refineries³⁹¹. The restriction on value added export of product with sugar content will affect Investments in the Agro-Industries in the region in terms of potential export of processed foods to the EU market in two material aspects more so for Guyana. Firstly, the CARIFORUM States are net exporters of raw sugar as there are no sugar refining facility in any of the CARICOM State and because the EU sugar regime makes no real distinction between raw sugar and refined sugar export, then it seems that any sugar exported from the region into the

³⁹¹ Interview- Ambassador Derrick Heaven, Kingston, Jamaica. May22, 2009.

EU will be covered in the quota allocation. Therefore, even if the Caribbean were to increase its yield and productivity, there would be no real incentives to invest in value added in terms of refined sugar and or processed food. For example, Guyana is the largest producer of sugar in the region, while Trinidad and Tobago has the cheapest energy source. Therefore, were a sugar refinery be established in Trinidad and Tobago to refine raw sugar from Guyana to export to the EU that may not be economically feasible because of the restrictions. So also would be the situation for investments in agro-processing of product with sugar content. Therefore, although the Rule of Origin allows greater flexibility for the manufacturing sector, it will bear no real benefit with respect to products with a sugar content coming from the CARIFORUM State.

Of course, this does not assist the expansion of trade and investment for the region; for if the Caribbean States are to diversifying exports their Agro- processing must be part of that measure for potential export diversification. This is a disincentive to industrialization in the region and inhibits the deepening of economic integration in the region.

So, while there is some degree of asymmetry in the liberalization process under the Agreement, the pattern of the trade between the EU and CARIFORUM indicates that the CARIFORUM import of goods from the EU exceeds to a great extent what it exports to the EU. The figures available for 2008 show that CARICOM's export to the EU was US\$ 1.38 billion and import stood at US\$2.45 billion³⁹², a trade deficit on the CARICOM's side as between the two partners exist in all areas except tourism and tourism -related travel. In term of the basic structure of the trade relations, the CARICOM States are exporters of unfinished or raw material to the EU market, while the region is a net importer of finished products which the price differential between the export of raw material and the import of finished products almost on all count remains

³⁹² The CARIFORUM-EU Economic Partnership Agreement (EPA): An assessment of the issues relating to Market Access, Safeguards and implications for Regional Integration, Economic commission for Latin America and the Caribbean (ECLAC) Port of Spain, T&T. C/CAR/L.181. (26 Nov. 2008).

higher. The Caribbean continues to be in a deficit with the EU. However, one of the objectives of the EPA is to adjust this imbalance over time.

The Caribbean's exclusion list and its liberalization approach have highlighted the concerns of the CARIFORUM States in the context of their objective in meeting the liberalization targets for WTO compatibility with the least possible negative impact. For example, the products which CARIFORUM States have liberalized in the main are those for which they have no competitive advantage nor any immediate capacity or likely future capacity to be competitive. Therefore, where there is competitiveness or the real likelihood of building competitive capacity exist, the region succeeded in getting those products onto the exclusions list.³⁹³ But even within that list of products to be fully liberalized, there exist a great degree of asymmetry geared towards protecting CARIFORUM revenue base for as long as possible by staggering of the schedules of liberalization. For example import of motor cars which is a big revenue item in CARIFORUM States will be liberalized in ten (10) years even though motor cars are not produced in the region.

The efforts to calibrate the exclusions list had expose the depth of CARIFORUM's internal negotiating strengths and capabilities, because even though there is overall asymmetry between the region and the EU, there had to be some degree of asymmetry within the region itself to protect the interest of each Member States without damaging the overall interest of the region. Take for example, the case of the Bahamas, which is a net importer of goods, with minimal agricultural and manufacturing bases, their tariff rate is very high and they are allowed to liberalize over eight (8) years after the Agreement comes into force. While Jamaica phases out its high tariff rate on imported Portland cement over 10 years, ostensibly to protect job in the building and construction sectors of the Economy and keep a significant revenue earner both in terms of General Consumption Tax (GCT) and import duties.

³⁹³ The list includes mainly Capital and Intermediate Goods and some "superfluous*" products for example human hair and mushrooms.

Trinidad and Tobago on the other hand which arguably has the strongest manufacturing base in the region with increased exports of over 500% between 2004-2006 to the EU was not under any compulsion to immediately liberalize all product not on the exclusions list but did so, to assist the regions target of “substantially all trade” Therefore, Trinidad and Tobago and Jamaica were the leading campaigners urging the conclusion and signing of the agreement³⁹⁴. In essence, Europe’s commitment for liberalizing is seen as quite liberal and its acceptance of an exclusion list of more than 10% of its trading partner CARIFORUM States is not within the normal course of Trade Agreement.³⁹⁵

The CARIFORUM States had effectively advanced their positions in the area of sensitive and special products in order to achieve their strategic trade objective and shielded their agricultural products. This they did by relying heavily on the openings provided under the WTO regime which allow developing countries to treat certain agricultural products as special products which can be “... treated with a greater degree of “flexibility” either by attracting lesser liberalization or exempt status, where selection is based on the question of “food security”³⁹⁶. Most of the products which the CARIFORUM succeed in adding to the exclusions list are those which are heavily subsidized in develop countries to protect their domestic farm industries³⁹⁷. Indeed during the CANCUN Ministerial, the Caribbean had to remind the French of this fact and practice in which the French themselves³⁹⁸ have been deeply indulged.

³⁹⁴ Ibid p.6.

³⁹⁵ Ibid.

³⁹⁶ Interview- Chandler. Barbados. 16.6.09.

³⁹⁷ These include; Chicken, Milk and dairy products, Rice, Sugar, pork and brine* meats, corn, potatoes, sheep and goat meat, wheat, vegetable oils, tomatoes, onions and garlic, beans and peas. All of which are in the CARIFORUM exclusion list in a broad sense.

³⁹⁸ Interview- Sam Chandler, June 16, 2009.

CARIFORUM's strategy was very pointed in terms of their liberalization commitments. For example, finished products are liberalized at a lesser rate and over a longer period than goods which although finished, are imported in furtherance of local production capabilities as in the case of fertilizers for agriculture production and also for medicinal supplies. What the region succeeded in doing, was to have placed those products which it produced at a sufficient level in terms of quantities on its exclusions list, while giving its producers up to 10 years in some instance to be competitive. The strategy is to liberalize faster in areas such as fertilizers and some chemicals to make that import less costly to farmers and manufacturers so that they may become more competitive in agricultural production and agro-processing. This initiative is then linked to the zero-for-zero provision of the Agreement where EU has undertaken to remove all subsidies on products which CARIFORUM has liberalize. This aspect of the Agreement is non-reciprocal but seems consistent within the rules of the WTO. Further, the CARIFORUM States will now enjoy the benefits of exemption of the Multilateral Safeguards Generally applicable under the WTO regime.³⁹⁹

There were enlightened arguments that the food security provision of the CARIFORUM-EU EPA is restrictive in scope and therefore does not include all agricultural products. Further, that it limits products to those which are "essential to ensure food security"⁴⁰⁰ and serves as a complement to the general safeguard clause by virtue of Article 25 of chapter 2 which deals with trade defensive mechanism. But it seems important to CARIFORUM not just for food security reasons, but also as a menu of trade objectives in the region's overall trade strategies in that the products on which it sought to have based its food security policies are also those which are placed on the exclusions list. This was a major aspect of the regions negotiating strategies. Therefore, even where the region does not produce such products which are covered in

³⁹⁹ LC/CARL.181. 26. Nov.2008, Economic Commission for Latin America and the Caribbean (ECLAC). Port of Spain, Trinidad & Tobago.

⁴⁰⁰ Pitschas, Christian: 'Special Safeguard Mechanisms in Agriculture Drawing Inspiration from the TDCA and the CARIFORUM EPA?' A study commissioned by GTZ on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ), Germany. Http. Downloaded March 13, 2010.

adequate quantities, they are placed on the exclusions list for purposes of “food security”. For the region, food security is also linked to the issue of food prices. So, for example, even though most peas and beans which form part of CARIFORUM Staple have been liberalized⁴⁰¹ the broad heading of peas and beans are in the exclusions list for the region. This is therefore a major part of the regions defensive and offensive approach to food security on the one hand and also to maintain its policy of developing competitiveness in these areas on the other hand⁴⁰².

3.15 Liberalization of Services:

It was very important for the region to negotiate a trade in services agreement, because over 60% of its GDP comes from the service sector, with Tourism accounting for 18%. Because of the importance of employment which is now linked to Tourism its value to the economies of the region cannot be overstated⁴⁰³. The service sector mix of tourism, investment and entertainment is vital to the regions export sector and source of employment. These are areas within which the CARIFORUM States are distinguishable from the other ACP regions which arguably justifies the need to negotiate separate trade agreements for each configuration. The extent of the asymmetry in the CARIFORUM States is reflected in large measures in the services agreement. Indeed, this is an area of the Agreement where there have been several agreements at the country level⁴⁰⁴; as between the EU 27 and the CARIFORUM 13. For example the Bahamas which is not a member of the WTO and Haiti which is a LDC had not

⁴⁰¹ ECLAC/LC/CAR These include Chicken, Milk and dairy products, Rice, Sugar, pork and brine* meats, corn, potatoes, sheep and goat meat, wheat, vegetable oils, tomatoes, onions and garlic, beans and peas. All of which are in the CARIFORUM exclusion list in a broad sense.

⁴⁰² Interview- Sam Chandler, Barbados, June 16, 2009, Henry Gill CRNM, Barbados, June 10, 2009.

⁴⁰³ Payne, Anthony and Sutton, Paul: “Repositioning the Caribbean within Globalization”. *Caribbean Paper* No.1.p.16. The Center for International Governance Innovation, (June 2007. p. 9) <http://www.sta.uwi.edu/iir/news/docs/Caribbean.cpapers.pdf>. downloaded (March 14, 2010).

⁴⁰⁴ Stevens, Christopher, Kennan, Jane and Meya, Mareika: Analysis of contents of the CARIFORUM and Pacific ACP Economic Partnership Agreement and challenges ahead Final report. Commonwealth Secretariat. London. Dec. 2008 p. 40. <http://www.CFTC-EAD-BCWG-208> Final Report. Pif. (December 1, 2009).

submitted any offer on services, compatible with the General Agreement in Services (GATS). These two countries are excluded under Article 63 of the EPA from commitments in the services sector⁴⁰⁵ at the time of signing. However, the Bahamas had subsequently presented its offer. While there is no compulsion on Haiti to make any offer as it benefits from the EBA. The EU has commitments under the EPA to open up its market to CARIFORUM service providers and investors in a range of service to include commercial presence and temporary presence of natural persons for business (made 4) for business visitors, and other types of short term entry. Individual professionals are also included as contract services suppliers. This seemingly brought the EU on par with similar service contractor allowed into the U.S.A and Canada under various assistance arrangements for temporary works.⁴⁰⁶ However there are restrictions based on the receiving States immigration Laws and procedure. These restrictions can hamper the benefits under the EPA. In addition, CARIFORUM States are allowed to have management trainees sent to affiliated companies in the EC for training for up to one year, and also to send other categories of workers for up to six months in 29 areas in which CARIFORUM States service providers have contract to provide services. So also, in the 11 areas in which self-employed persons provide service.⁴⁰⁷

The CARIFORUM States have committed to open up their services sector with a specific focus on export and infrastructural development. The strategy is to encourage investments in these areas to gain efficiencies through transfer of technology. It focuses on tourism, manufacturing, telecommunication, transport and services in the

⁴⁰⁵ Article 63 states that “with a view to incorporating in Annex IV the commitments of the Commonwealth of the Bahamas and the Republic of Haiti, which shall be compatible with the relevant requirements under the General Agreement on Trade in services (hereinafter the GATs), the parties and the signatory CARIFORUM States shall make changes to this Annex by decision of the CARIFORUM-EC Trade and Development committee no later than six months after the signatory of this agreement. Pending the adoption of such decision, the preferential treatment granted by the EC party under this Title shall not be applicable to the Commonwealth of the Bahamas and the Republic of Haiti”.

⁴⁰⁶ These include Tourism workers, entertainers, Artists, chef de cuisine and fashion models.

⁴⁰⁷ Legal advisory services, computer related services, and management consulting.

Environmental sector. In these areas the Dominican Republic has offered the EU the same terms as it offered to the US under CAFTA, while the CARIFORUM States had pressed the EC for concession on cultural cooperation through which its Artists and Musicians can enter the EU as services providers in a special category from those covered under mode 4. This was a priority, and a *quid pro quo* for the Region in the dying moments of the last stages of the negotiations. The asymmetrical nature of the EPA is also evidenced in the services sector commitments. Overall the CARICOM States have opened their markets in the service sector between 55-75% and with respect to the Dominican Republic they have opened up 90% and the EC has opened 94%.⁴⁰⁸ The CARIFORUM's trade strategy is reflected in the asymmetrical approach in opening up its services market as it is the only ACP configuration which is a Net exporter of services mainly in the area of tourism. The region opened up those areas while restricting others for which it is net importer. These States had to be consistent when negotiating future agreement with the U.S.A-Caribbean Basin Initiative (CBI) and Canada (CARIBCAN) both of which Countries along with the EU are the region's main sources of tourism⁴⁰⁹. Off-Shore financial services in the OECS and Belize is also a vital area of the region's services sector. There existed a desire in the region to diversify its services by promoting investment in telemarketing, informatics, information technology, and data processing, banking, insurance and international maritime transport services. These are important areas the region's as a net importer of capital and this coupled with their eagerness to reduce unemployment is of very serious concern as these factors weigh heavily on the region's development policies and strategies.

On the question of National Treatment (NT) and the Most Favoured Nation (MFN) in Trade in services, the CARIFORUM's negotiating strategy has fully emerged through its

⁴⁰⁸ Stevens, Christopher, Kennan, Jane and Meya, Mareika: Analysis of contents of the CARIFORUM and Pacific ACP Economic Partnership Agreement and challenges ahead Final report. Commonwealth Secretariat. London. Dec. 2008 p. 40. <http://www.CFTC-EAD-BCWG-208> Final Report. pif. (December 1, 2009).

⁴⁰⁹ The EU-CARIFORUM EPA on services Investments and E-Commerce Implications for other ACP countries. South Centre Analytical note SC/AN/TDP/EPA/17, April 2008, Geneva p.3. http://www.southcentre.org/index2.php?option=com_documenttask=doc_view&gid=754&itemid=69. (March 14, 2010).

commitments in those areas. The region had downplayed the risk of exposure of limiting itself in terms of its options in promoting and encouraging domestic service suppliers in the sectors where it made commitments, ⁴¹⁰ vis-à-vis third countries, because, for it to give better commitments in those areas to third countries, for example, Brazil, China or India, would necessitate the concurrence of the EU through the Joint CARIFORUM-EC Council. The Caribbean Regional Negotiating Machinery (CRNM) argued that there is no country in the developing world with which it trades that it is likely to give any better treatment, and the same is true with respect to countries in the Global North⁴¹¹. Therefore, the region liberalized 29 sectors which have potential for inward investment flow to build competitive capacity in developing the service sector. The MDC's of the region will open up 76%, and the LDC 65% over a 25 year period.

In the area of competition policy, the region has only opened to the extent that it had to protect the region from unfair practices of large EU Corporations in bidding for Government contracts in the region. The CARIFORUM States had agreed that the process must be transparent. In the area of cross border supply of service, modes 1 and 2, there are three (3) services which are excluded namely: audio-visual services, National Maritime and international air transport services and government services. The EU has completely excluded all Telecommunication services, and the satellite broadcast transmission services are subject to Safeguards. Their exclusion will have negative impact on CARIFORUM service providers. So also are the limitations placed in the areas of health and social services impacting on mode 1 service suppliers.

⁴¹⁰ Ibid p. 10.

⁴¹¹ Interview- Henry Gill, Barbados. June 10, 2009.

Table 11: Liberalized service sector in the CARIFORUM-EU Agreement

CARIFORUM States commitment on service	Entertainment services Liberalized by the EU:
<ul style="list-style-type: none"> • Accounting, auditing and bookkeeping Services • Architecture • Computer and related Services • Convention services • Courier services • Engineering • Entertainment services • Environnemental services • Hospital services • Maritime transport • Management consulting • Related scientific and technical consultant services • Research and Development • Services Incidental to manufacturing • Telecommunications • Tourism and travel-related services 	<p>Theatrical producer, singer group, band and orchestra entertainment services</p> <p>Services provided by authors, composers, sculptors, entertainers & individual artists</p> <p>Ancillary theatrical services</p> <p>Circus, amusement park and similar attraction services</p> <p>Ballroom, discotheque and dance instructor services</p> <p>Other entertainment services</p>
<p>I. " Contractor service Providers</p> <p>1- Legal advisory services in respect of international public law and foreign law (i.e. non-EU law). 2- Accounting and bookkeeping services. 3- Taxation advisory. 4- Architectural services. 5- Urban planning and landscape architecture services. 6- Engineering services. 7- Integrated Engineering services. 8- Medical and dental services. 9- Veterinary services. 10- Midwives services. 11- Services provided by nurses, physiotherapists and paramedical personnel. 12- Computer and related services. 13- Research and development services. 14- Advertising services. 15- Market Research and opinion polling. 16- Management consulting services. 17- Services related to management consulting. 18- Technical and analysis services. 19- Related scientific and technical consulting services. 20- Maintenance and repair of equipment, including transportation equipment, notably in the context of an after-sales or after-lease services contract. 21- Chef de cuisine services. 22- Flashions model services. 23- Translation and interprétation services. 24- Site investigation work. 25- Higher education services (only privately-funded services). 26- Environmental services. 27- Travel agencies and tour operator's services. 28- Tourist guides services. 29- Entertainment services other than audiovisual services.</p> <p>II. Independent Professionals service providers</p> <p>1- Legal advisory services in respect of international public law and foreign law (i.e. non-EU law). 2- Architectural services. 3- Urban planning and landscape architecture services. 4- Engineering services. 5- Integrated Engineering services. 6- Computer and related services. 7- Research and development services. 8- Market Research and opinion polling. 9- Management consulting services. 10- Services related to management consulting. 11- Translation and interpretation services." See Sources.</p>	

Sources: CARIFORUM-EC EPA, www.crnw.org See also Sauv , Pierre and Ward, Natasha;

<http://www.ecipe.org/publications/ecipe-working-papers/the-ec-cariform-economic-partnership-agreement-assessing-the-outcome-on-services-and-investment/PDF> Downloaded May, 12, 2009.

3.16 Regional Integration:

By virtue of Article 238 (2), any treatment given to the EU by any Member State of CARIFORUM shall be extended to the other Members of CARIFORUM. This notwithstanding that the Dominican Republic is not part of CARICOM, but has a Free Trade Agreement with the region, which is not fully implemented. Further, that the Dominican Republic has a liberalization schedule commitment under which it will liberalize at a faster rate with the EU than the rest of the Region. What this therefore means is that whatever the Dominican Republic offers to the EU which is better than what it offers CARICOM States under the Free Trade Agreement it is obliged to offer to the CARICOM States. But, the converse is also true that within a year of the agreement whatever more favourable advantage CARICOM gives to the EU, some will have to be offered to the Dominican Republic, but for the LDC's of CARICOM the period is two years and five years in the case of Haiti⁴¹².

The asymmetrical commitments which are the hallmark of the agreement following closely to the Cotonou trade regime as the policies and strategies of the EC in its relation to the CARIFORUM States is to build a reciprocal trading arrangements and regime. This, the EC insisted was at the centre of their objective in opening up regional markets more so in the area of services. It argued that the "services and investment provisions include reciprocal but asymmetrical commitments, with gradual and effective Market opening consistent with WTO rules, taking into account the level of development of the CARIFORUM countries"⁴¹³.

For example; on the question of Special and Differential Treatment in the area of trade in services, the EPA commitments made by the CARIFORUM and the EU parties exceeded the basic requirement of the GATS. Indeed it is GATS plus in favour of the CARIFORUM States particularly in the area s of investment, trade in services and e-

⁴¹² Article 238 (3) (11) and (13)

⁴¹³ European Commission, "CARIFORUM-EU Economic Partnership Agreement: an overview," Information Paper by DG Trade, (April 2008), p. 21.

commerce. Therefore, except for these areas under mode 1, 2, 3 and 4 which the EC has excluded⁴¹⁴, liberalization is asymmetrical. The pattern of scheduling is unique with some flexibility as the Dominican Republic and the EC have committed to liberalize a larger number of sectors, than the entire CARICOM. While, the CARICOM MDC's have undertaken to liberalize more than its LDC's with a built in stagger of these schedules.

CARICOM's policy to address its employment and investment deficits was a carefully crafted response to the EC's offer on mode 4, to which the EC made adjustments and committed to open up its market to certain contract service providers and suppliers and independent professionals, buttressed by a phase- in period by the region's LDC's of between 5-13 years. The degree of flexibility allowed is even more pronounced where CARIFORUM States reserve the right to present its list of non-conforming measures, which have not been scheduled but had existed at the time of signing.⁴¹⁵

The greatest singular difficulty posed in the CARIFORUM region was the exercise to calibrate and agree the exclusions list for trade in goods and to meet the WTO requirement of "substantially all trade". The matter was resolved through the internal negotiating processes and the parties used the GATs as their guide, so that each state within the region was never hard pressed to make offers in keeping with the national priorities and therefore there created greater flexibility in determining the regional offer⁴¹⁶.

⁴¹⁴ The EU-CARIFORUM EPA on services Investments and E-Commerce Implications for other ACP countries. South Centre Analytical note SC/AN/TDP/EPA/17, April 2008, Geneva p.3.
http://www.southcentre.org/index2.php?option=com_documenttask=doc_view&gid=754&itemid=69. (March 14, 2010).

⁴¹⁵ Pierre Sauve and Natasha Ward: "The EC-CARIFORUM Economic Partnership Agreement: Assessing the outcome on services and Investment". European Centre for International Political Economy (ECIPE) 2009 p. 9 available online <http://www.ecipe.org/publications/ecipe-working-papers/the-ec-cariforum-economic-partnership-agreement-assessing-the-outcome-on-services-and-investment/pdf>

⁴¹⁶ Ibid.

3.17 Innovation and Intellectual Property (IP)

Part of CARIFORUM's trade strategy was to link competitiveness, innovation and creativity. It was significant that the region pressed for a separate chapter on Innovation, but excluded provision on patent especially in the areas of pharmaceuticals and agro-chemicals. These are areas in which the region believed they are able to enhance competitive capacities for exports, while satisfying domestic markets over time. The extent to which the CARIFORUM States have liberalized under the goods regime is tied into the strategy of liberalizing the IP and Innovation sectors. For example, the region liberalizes products such as medicine and fertilizers at such levels so as to benefit production and build competitive capacities. This is linked to the approach to Innovative sector where patent in the areas of pharmaceuticals and agro-chemicals are excluded.

3.17.1 Innovation

Innovation is dealt with under Title IV chapter 2, Article 131-138. The parties recognized the importance of protection of intellectual property “in restoring creativity, innovation and competitiveness” and were “determined to ensure increasing levels of protection to their levels of development”.⁴¹⁷ Article 133 sets out the regional undertaking to establish measures and regulatory framework for enterprises to become “competitive through innovation and creativity”. Article 135 sets out the need for cooperation in the area of competitiveness and innovation while Article 36 outlines the areas for cooperation to include joint research network in areas of common interest”.⁴¹⁸ Article 137 deals with cooperation on information society and information and communication technologies while Article 138 addresses cooperation in the areas of eco-innovation and renewable energy.

⁴¹⁷ Article 131 (2).

⁴¹⁸ Article 136 (1) (b).

This chapter is unprecedented in the annals of IP chapters as it is the first to include a dedicated section on innovation⁴¹⁹. This aspect was first put on the table by the CARIFORUM State, which insisted that there should be a dedicated section on the subject⁴²⁰. The potential for CARIFORUM to increase competitiveness and attract investment will depend to a large extent of the cooperation they receive in terms of financial and technical support to build the institutional mechanisms and framework necessary for a first class innovation regime to foster research and development (R&D), particular in areas such as health and sports⁴²¹. This could give a boost in development along the lines of the draft World Health Organisation strategy and Plan of Action on Health (R&D)⁴²².

Intellectual Property is covered under section 2 of chapter 2, Article 139-164. This section address a variety of issues and categories of IP to include but not limited to patents, copyright and related rights, utility models and most importantly the various cooperation measures to be employed to give effect to the objective of the overall agreement. The broad areas covered are namely: The nature and scope of the obligations (Article 139), Treatment of least developed countries (LDCs) expressed in Article 140, technology transfer (Article 142), copyright and related rights (Art. 143), Trademarks (Article 144), Geographic Indicators (Article 145), Industrial designs (Article 146), Patents (147) Utility models (Article 148), Plant varieties protection (Article

⁴¹⁹ Interview- Ambassador Henry Gill, June 10, 2009, Barbados.

⁴²⁰ Interview- Henry Gill, CRNM. Barbados June 10, 2009.

⁴²¹ Bernal, Richard: Everything But Alms. Op. cit.

⁴²² In May 2006, the world Health Assembly at its Fifty-Ninth meeting established and mandated and Intergovernmental working group on Public Health, Innovation and Intellectual property (IGWG) with a mandate to develop a strategy and Plan of Action to address “conditions disproportionately affecting developing countries” in the area of public health, innovation and intellectual property: Between Dec.2006 and May 2008, the group met and at its 60th Assembly in May 2008, the WHO adopted Resolution WHO 61.21 Global Strategy and Plan of action (GSPOA) on Public Health, innovation and intellectual property, which highlights eight main area, designed to foster innovation, build capacity, improve access and mobilize resources.

All the CARIFORUM States are members of the WHO, so also are the EC Member States. Document is accessed on line at www.who.int/phi/implementation/phi_globstat_action/en/print.html. (March 15, 2010).

149), Generic resources, traditional knowledge and folklore (Article 150) and General obligation to include enforcement (Article 151-164). The commitments are therefore very exacting and detailed, which will require tremendous efforts, resources and technical support to implement on the CARIFORUM's part.

The degree of flexibility allowed to the LDC's in the EPA is of significance to their development and policy space. The transition period is up to January 1, 2014 but may be accelerated, so also the LDC's can extend the period through the Trade and Development Committee (TDC) based on development priorities. The approach to the Intellectual Property regime in terms of its flexibility on implementation reflects CARICOM policy of Special and Differential Treatment in the general context of the reciprocity and degree of asymmetry envisaged through the negotiations.

However, it is in the area of Transfer of Technology that the CARIFORUM States seemed to have gained some of its better successes in the EPA negotiations. The region suffers from a technology deficit and is a net importer of technology. Here, the EC has undertaken to exchange information with the CARIFORUM on practices and policies regarding technology transfer. This is an area where the region had difficulty achieving any success at the multilateral level, so because of the issue of information asymmetries between the two sides, the undertaking to provide incentives for the transfer of technology is welcomed⁴²³.

Another very important area of break-through for the CARIFORUM States is the inclusion of Geographical Indicators. This is an area which is vital to the EC, however, they were always better placed to address the issues globally because of their well developed system,⁴²⁴ but this is also an area where the Caribbean producers and exporters suffer severe losses in international markets, in particular where they have a

⁴²³ Sisule F. Musungu. 'Innovation and Intellectual Property in the EC-CARIFORUM EPA: Lessons for other ACP Regions' A study commissioned by GTZ on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ), Germany.p20 www.gtz.de/de/dokumente/en/-epa-cariforum-and-beyond-innovation-and-intellectual-property-2008.pdf (Dec.12, 2008).

⁴²⁴ Ibid.

‘foot hold’ in niche markets in Europe. The Caribbean Diaspora in Europe is a very important market source for the regions exporters of agricultural and finished products. Furthermore, the region has always lacked the capacity to address that problem especial in the European market, so the detailed protection offered in the agreement is welcome by the region. This is an area however, which would require significant resource, human, technical and financial to implement and CARIFORUM would need to garner such resources to effectively establish this regime and its monitoring and enforcement mechanisms

3.17.2 Genetic Resources and traditional knowledge

The CARIFORUM States are no doubt aware of the ongoing discussion, in various International arenas on the protection of genetic resources and traditional knowledge,⁴²⁵ and would have its own policy positions. However, the region seems not to have pressed the EC in making specific commitments for the protection of genetic resources and the relevant traditional knowledge involved in those inventions. The region had an offensive strategy in the area of Innovation and intellectual property, but it also had a defensive strategy in trying to get an advantage to move the region into the direction of achieving technological advance. Its strategy in the negotiation was to identify areas where its interest were greatest and seek concessions as a trade-off for those which the EC had strategic interest. But, while it gained concessions from the EC in Innovations, the region’s commitment to the EC are scheduled to take effect over a much longer period. For example, the LDCs in the region are obliged to implement their commitments in some areas as outlined in section 2 of chapter 2 until 2021⁴²⁶.

⁴²⁵ For example, at the W.T.O’ International committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) at W.I.P.O. and in the convention on Biological Diversity (CBD).

⁴²⁶ See Suisule F. Musunga op.cit. p 35.

The establishment and enforcement of geographical indications have been of great significance to the EC.⁴²⁷ The rule base provisions in the EPA, reflect the EU's enforcement regime which they have pushed at the multilateral level. The CARIFORUM States in agreeing to these have placed a severe burden on their own capabilities and Institutional latitude, beyond that which they have agreed at the multilateral level. They however, will rely on the EU for cooperation in establishing an effective regime to address issues of enforcement in both markets. The CARIFORUM's strategy was to get commitment to assist the region in implementing the regime that the EC pressed for and the region made concessions. These specific commitments are costly to implement. The EC will assist the region in Implementing EPA that the region will be able to establish Innovation and IP regime anticipated under its multilateral commitment. This was another clear example of the outcome of the regions offensive and defensive strategies in meeting its development objective through asymmetrical commitments. Also,, the strategy has strengthened the CARIFORUM's gains in that the Innovation and IP commitments which are linked to other areas which have implications to impact positively for the region for example in the areas of Investment, regulatory aspects of E-commerce, competition policy, dispute settlement and the general exception clause.

Furthermore, the issue of cultural cooperation is tangentially linked as part of the regions offensive strategy. Because, the inclusion of the Protocol on Cultural Cooperation is critical as a positive response with respect to Trade policy setting to accommodate and give effect and meaning to Article 16 of the United Nations Education, Scientific, and Cultural Organisation (UNESCO) Convention on the protection and promotion of the cultural diversity and application of the principle of preferential treatment. In this regard the inclusion of this protocol in a free trade agreement is unprecedented⁴²⁸. Some European States resisted the inclusion of this

⁴²⁷ European Commission Directorate General for Trade: Strategy for the Enforcement of Intellectual Property Rights in Third countries.

⁴²⁸ Pierre Sauve and Denis Audet: The Service Trade Component of an Economic Partnership Agreement (EPA): Implication for the Eastern African Community. International Trade Centre (ITC) Commonwealth

provision in the agreement, but finally conceded to the Caribbean's demand for its inclusion. The region has a well developed cultural awareness which is highly recognised in its music dance form and culinary, fashion and other forms of cultural identities peculiar to the regions which it has to showcase as parts of the services it will provide in the future. The CARIFORUM States could not therefore allow the opportunity to pass without insisting that it be treated as a special protocol in this agreement. But, while the region is happy with this provision, its application and implementation will be problematic because each Member State of the EU has its own visa regime and immigration policies which no doubt will be used as a non-tariff barrier to prevent Caribbean Nationals from entering their territory to trade in cultural services. For example, Jamaican musicians are routinely denied visa to perform in many European States and this is a reflection of reverse discrimination, because the region depends heavily on Tourism services, it had no visa restriction on Europeans and North Americans visiting their shores, however the reverse does not hold true.

It is argued that the very competitive tourism market in the region is use as the basis for restricting the Member States of CARICOM from instituting a visa regime for Europeans and North Americans out of fear that with the increase cost the tourism product could be harmed. But it is also equally argued that the region has its own uniqueness and a properly planned and implemented regional immigration and visa policies could provide revenue to further enhance the tourism product of the regions.

It will be extremely difficult for the region to remove the possibility of the visa regimes in Europe being used as a non-tariff barrier against Caribbean nationals, because it seems that this is not a matter which falls under the purview of the Joint CARIFORUM-EC COUNCIL nor the Trade and Development Committee. This provision if not properly monitored could prove to be a gain without any benefit, something against which the region has to be very vigilant.

Secretariat London.p.4.online at www.intracen.org/btp/wtn/expert.meeting/vwanda/sauve.pdf (November 22, 2008).

3.18 Competition Policy

Competition policy is covered in chapter 1 of Title IV dealing with both goods and services. Article 125-130 provide for the definition of competition (Article 125), outline the principles governing competition (Article 126) the implementation (Article 127) enforcement and exchange of information (Article 128) Public enterprise and enterprises entrusted with special or exclusive rights (Article 129) and cooperation (Article 130).

The CARICOM States have come to recognize the impact of competition on development. The Revised Treaty of Chaguaramas, 1973 which establish the Caribbean Community makes provisions for competition, but implementation has been very slow. The inclusion of competitive rules in the EPA was welcomed by the region. The Caribbean however, is aware that the structure of their economies in many instance, where some service such as utilities are provided by the state and it therefore pressed for exemption of those services from the rules and argued that those should be regulated through a special Regime.

The competition regime under the EPA also recognizes the principles of special and differential treatment as it makes for flexibility for CARIFORUM State to continue to invest in utilities companies. The provisions of the EPA expressly states that “nothing in the services chapter should be construed to require privatization of public utilities”⁴²⁹, this provision seems to buttress the effect of Article 129 in terms of the region’s social policy space to maintain public or private monopolies. Flexibility is also provided by the commitment of the region to establish their own regulatory framework and enforcement mechanisms, nationally and regionally; with a period of five years so to do. The EU has undertaken to assist the CARIFORUM in developing the legal and Institutional framework for establishing and maintaining anti competitive practices.

⁴²⁹ Article 60.2.

3.19 Conclusion

The CARIFORUM-EU Economic Partnership is a comprehensive free trade agreement, the terms of which have far-reaching effect on future regional or bilateral Free Trade Agreement between the global North and developing South, or indeed between developing countries themselves. Critics of the agreement argued that it has gone too far in terms of commitments made, which have not yet been agreed at the multilateral level and it has therefore left other developing countries little policy space or indeed negotiating space at the multilateral level more so in the areas of the so called “Singapore issues” of competition investment, government procurement and trade facilitation. But, the terms of the agreement cannot be seen in a single dimensional confine, as it is designed to take the region into the emerging global political economy of trade and to fit into the trade architecture and regime which non define how global trade structure is managed.

The real measure of the success of the CARIFORUM States in achieving their objective in negotiating a comprehensive agreement is the extent of the application of its offensive and defensive approach to craft the best deal which they could have achieved given the circumstances of the conditions which they faced during the negotiation process. There have been gains and concession on both sides with each side believing that the terms of the agreement represent the furthest each was prepared to make concessions.

The agreement on the face of it provides great hope for the future of trade in goods between CARIFORUM States and Member State of the European Union. On the issue of border restrictions, the EU has provided Duty-Free, Quota Free (DFQF) access to CARIFORUM goods entering European markets as at the 1st of January 2008, subject to conditions on importation of rice and sugar which are dealt with under different protocols and the region is allowed up to twenty-five years to liberalize. However, the exclusion list of goods was problematic because of the commitment to eliminate all non tariffs barriers on the entry into force of the agreement and such non tariff barriers

commitment apply also to the products in the exclusion list. This would have an immediate negative impact on the revenue on CARIFORUM States. However, it does not seem from the tenor of the agreement that if such difficulty were to arise from fall out in revenues, whether these can be addressed by the CARIFORUM-EC Trade and Development Committee, as that committee will only in this regard deals with fall-out having to do with tariff reductions⁴³⁰. Therefore, the power of the Trade and Development Committee could prove disadvantageous to the CARIFORUM States in the immediate short term.

On the question of the Most Favoured Nation (MFN) treatment, the agreement is restrictive on CARIFORUM's policy space in terms of its ability in future trade arrangements especially with developing countries. Because, by committing themselves to give to the EC the right to demand similar treatment of in any future Free Trade Agreement it negotiates, were it to give better treatment to a third country's exports is to give the EU some degree of command over the region's trade policies. This provision is unique and it has caused concerns to some developing countries such as Brazil and India. The region is of the view however, that the concerns are only in "theory" as in a practical sense, it is not foreseeable that the region will enter into any free trade agreement with a developing country in which its trading relationship would be of such great magnitude that it will be forced to give any better treatment to it than what the regions has committed to the EC in the EPA⁴³¹.

The Rules of Origin (RoO) is also another area which has potential for development of the regions Industrial base, because it offer better terms than what previously existed under the Lomé and Cotonou regimes. However, it restrict the input of sugar in processed foods to be exported to the EU, in terms of the sugar regime which will be in place to monitor the importation of sugar into the EU.

⁴³⁰ Title 1, Article 16.6.

⁴³¹ Interview-Henry Gill, Director-General CRNM, June 10, 2009, Barbados.

The treatment of sugar is of particular importance to CARIFORUM States as this is an area where the region has lost significantly following upon the denunciation of the long standing Sugar Protocol of 1975. The reform of the EU internal market and its impact on the sugar regime establish with the ACP since 1975 came under severe challenge from other sugar producers namely; Brazil and Thailand. Since then there has been a 36% reduction in price for ACP sugar. Therefore, sugar revenue for the region was severely affected.

The only area in which the Caribbean seemed to have gained any benefit under the sugar regime is that it is re-allocated any short fall under the quota given to a Member State. However since 2009, the quota system is abolished, but the price is subject to the EU price mechanism which bears not guarantee to maintain higher prices.

Further, CARIFORUM sugar will be competing with sugar produced in the French overseas Territories in the Caribbean, whose producers are being paid €2 billion between 2007 and 2013 for an output of 280,000 tonnes of sugar which will put them in a more advantageous position in the European market when compared to the CARIFORUM States. The region's problem is further exaggerated by the fact that, it will have to compete with sugar producers under the EBA regime whose product will enter the EU DFQF automatically and independently of any EPA arrangement across the entire ACP configuration.

In the area of trade in services, the region made significant gains. However, its willingness to negotiate a service agreement which surpasses that which has been agreed at the multilateral level is of great concern to other ACP States. However, the region felt it very important to negotiate a service agreement which best suits its own trade policy. The services agreement negotiated was mutually desirable but for different reason. The Europeans wanted to use the services agreement to further its global trade policy by "kick starting" the stalled Doha Development Round. The fact the CARIFORUM States were eager to negotiate services had to do more in light of the emerging trends in the regions trade direction, and the trade diversification policies. To

have negotiated an agreement which include the controversial Singapore issue was a bold but necessary move by the CARIFORUM States, one in which they knew they would suffer losses in order to make gains, so they prioritize. For example, the region knew that getting an agreement on Government Procurement was vital to the interest of the Europeans and they had to concede something to the Europeans in order to achieve their priorities in the areas of Innovation and cultural diversity which some European state had vigorously opposed.

So, while the commitments in the services sector are vital to both sides, they leave very little room for flexibility, although being asymmetrical. The rules are of binding nature and are subject to the dispute settlement and avoidance procedures of the Agreement. This EU's objectives having been met equally in these areas of the agreement further under-scored by the EU's willingness to fund the Implementation of the arrangements.

The CARIFORUM-EU Economic Partnership is one of the most innovative and far-reaching free trade agreement ever entered into with the North-South Relation indeed, so unique and innovative that it now set the precedent for future free trade agreement, not just between Europe and the rest of the developing world but among developing countries themselves, United States and other developing countries, Europe and Asia and also have implication for the Multilateral level Doha Round of negotiation and within the United Nations System of Trade Arrangement spearheaded by the United Nations Conference on Trade and Development (UNCTAD).

The CARIFORUM States are net importers of capital investments and therefore depends heavily on Foreign Direct Investment (FDI) to move their economies along a part of development. However the portions of Foreign Direct Investment has been constantly declining since the 1960's and only in the areas of tourism there has been some appreciable investment ,but such investment are from North American sources. If the region is therefore to benefit from the new investment regime under the EPA, it must develop a comprehensive investment promotion plan and strategy to drive the productive and service sectors to take advantage of innovations and traditional

knowledge. The use of indigenous materials and knowledge for diversification of the economic and trade base of the Caribbean economies is very important to the future viability of the region in light of the pressures they now face due to the demise of the banana industry and the heavy indebtedness of the sugar industries within the region coupled with the falling export revenue from rum because of competition from cheaper sources from Brazil. Therefore for the region to be competitive in sugar exports the region would require large sums of FDI in the short and medium term, but it seems unlikely that those sources of FDI will emanate from Europe, and local resources to invest in these areas are non-existent in an atmosphere where governments cannot subsidise the sugar industry because of scarcity of revenue and tight fiscal conditions. So also, the bankable guarantee which the industry had long enjoyed under the old Lomé regime no longer appertains⁴³².

The Agreement embraced innovative arrangement both in terms of giving meaning to special and differential treatment, Innovation in service and trade-related Issues, particularly in the areas of services and the so-called “Singapore Issue” because it exceeds what have been agreed at the Multilateral level without infringing the main objectives and thrust of Caribbean regional trade and development policies. It reflects pragmatism and boldness on the part of CARIFORUM States to conform the realities of the global political economic system and carve for itself both offensive and defensive shields, However, while the CARIFORUM States have made positive achievements and gained, there are also serious challenges and in the short, medium and long term when the provisions of the EPA are viewed in their entirety.

⁴³² Interview- Ambassador Derrick Heaven, Chairman of the Sugar Industry Authority, Kingston, Jamaica, May22, 2009.

CHAPTER FOUR

The problems of implementing the CARIFORUM-EC Economic

Partnership Agreement (EPA)

4.1 Introduction

The Economic Partnership Agreement EPA signed between CARIFORUM countries and the European Union is a free trade Agreement with development components. It is the only comprehensive EPA negotiated within the ACP regional configuration of states which was negotiated within the stated period up to the 31st of December.

The implementation processes will involve a plethora of reforms in the legal, procedure and administrative mechanisms of the CARIFORUM States, which of course will incur tremendous costs in terms of human resources, Infrastructural changes and revenue loss. However steps have been taken across the region and in individual states of CARIFORUM to commence the implementation process. Regional institutions will be established to function alongside those which are mandated by the EPAs, but, some existing Institutional framework will have to be modified. Further, while some deadlines have been missed by CARIFORUM State they have taken steps to meet the deadline set for reduction of tariff for 2011. However, the CARICOM secretariat faced challenges in completing the road map for EPA implementation. The implementation of the EPA is remains a work in progress which will run until 2033..

This chapter analyses the areas of implementation of the EPA both at the regional and the national levels, and identify the sources of funding in the context of the development dimensions of the EPA. While, the approach will not be country specific, references will be made to the steps taken in some territories and at the regional levels to implement the agreement and make some recommendations for the implementation process.

4.2 Legislative Requirements

The early stages of the parliamentary process have taken place in all the territories of the CARIFORUM region. Ratification in the Dominican Republic was done with only two members not voting for the ratification of the Agreement⁴³³.

The legislative processes of approval was required in each signatory state before those States could sign the agreement. The last CARIFORUM State which signed the agreement is Haiti, while the European Union and its Member States have all signed the agreement⁴³⁴ and have taken steps to implement their obligations.

So there was the pre-signing debate in all the national parliaments of the CARIFORUM States which provided the governments with the legal authority to sign the agreement. The signing having taken place on the October 15 2008, the region has embarked upon the post ratification phase of the legislative process. In Jamaica for example, the relevant laws are being reviewed to make the necessary changes to give effect to the implementation, indeed, the cabinet has issued its drafting instruction⁴³⁵.

There are three fundamental approaches to the implementation of the EPA, firstly the regional government are expected to embark upon the legal reforms and to enact laws and put in place the required procedures and mechanism to implement the Agreement. Secondly, the regional commitments are undertakings by the CARICOM secretariat as the implementing arm of the CARICOM States and thirdly, there are also the CARIFORUM requirements which are to be executed under the CARIFORUM Coordinator, because the Dominican Republic is not a Member State of CARICOM.

⁴³³ Interview- Fredrico Cuello, May, 15, 2009.

⁴³⁴ Officials Journal of the European Union L289/1/3. (October 30, 2008).

⁴³⁵ Interview- David Prendergast, April, 15, 2010. Ministry of Foreign Affairs & Foreign Trade, EPA Implementation Unit, Kingston Jamaica.

4.2.1 Notification process at the WTO and provisional application to the EPA

After the agreement was signed it had to be noted at the WTO in accordance with the December 14th 2006, decisions of the General Council of the WTO regarding the transparency mechanism for Regional Trade Agreement (RTAs). The CARIFORUM-EC EPA was jointly notified to the Committee on Regional Trade Agreement (CRTA) on 16th of October 2008 and has been modified twice to accommodate the late signatories of Guyana and Haiti. This procedure had to be set in motion from the time the agreement was signed to avoid challenges and to commence the immediate provisional application of the agreement before the 31st of October 2008. It was a condition precedent that the agreement had to be notified to the WTO before its provisional application⁴³⁶. Both sides had to notified the WTO because all the Signatory States on either side except the Commonwealth of the Bahamas are also Members of the WTO. However, in the case of the Bahamas, no adjustment had to be done because although it is a signatory States to the agreement,, it is not a member of WTO.⁴³⁷ However notwithstanding the processes at the WTO, the Secretariat-General of the Council of European Union is the depository of the agreement.

4.2.2 The role of the CARICOM Secretariat

The Heads of Government of the Caribbean Community (CARICOM) had directed that an Implementation unit of the EPA be established in the Secretariat. The unit was established and commenced its work on the 16th February 2009. The secretariat is responsible for developing the EPA road map for the region to include capacity building, economic integration particularly in the Organisation of Eastern Caribbean States (OECS) and to give support to the Caribbean Export Development Agency. The Unit is being financed through United Kingdom Caribbean Aid for Trade and Regional

⁴³⁶ The Transparency Mechanism for Regional Trade Agreements. Decision of the General Council of the WTO, (December 6, 2006).

⁴³⁷ CARIFORUM Update on the EPA presented to the 88th Session of the ACP Council of Ministers Brussels, 15-18 December 2008. <http://www.acpsec.org/en/council08/CARIFORUMI.doc> (December 12, 2009).

Integration Trust Fund (CART Fund), with a grant of €5 million which is been administered by the Caribbean Development Bank (CDB) for EPA related projects⁴³⁸. However, while the CARIFORUM State have not yet appointed a Coordinator for CARIFORUM to oversee the implementation of the EPA, the secretariat is now coordinating the regional program to implement the agreement. It has developed draft model legislations for consideration by regional governments to facilitate the way forward in the implementation process. However, none of the CARICOM State has yet passed any of the necessary legislation to implement the Agreement⁴³⁹. Indeed, the schedule of work and work programs for the OECS are still being developed and the role of the OECS Secretariat in this process is not yet defined. This is so, because its work is dependent on the directions of the Implementation Unit of CARICOM and Member States⁴⁴⁰. There seems to be some degree of obscurity with respect to the relationship between the CARIFORUM Secretariat and the CARIFORUM-EC Trade and Development committee. Because, the CARIFORUM coordinator when appointed will have responsibility to the EPA institutions and such appointed is crucial to the implementation. However, there is no guiding authority to ensure that the appointed of the coordinator is effected and this has created a lingering political issue which must be settled in order to facilitate the implementation of the agreement as the Dominican Republic is not satisfied with the implementation arm of the agreement being placed in the CARICOM Secretariat.

4.2.3 Financial cooperation

The Europeans were careful not to make any binding commitment to provide additional fund for the implementation of the EPA, neither did they identify any specific amount for the region from their pledge of Aid for Trade under the 10th European Development

⁴³⁸ Interview - Branford Isaacs, Friday April 16, 2010.

⁴³⁹ Ibid.

⁴⁴⁰ Request and Response from Ms Virginia, Paul of the OECS Secretariat. (April 11 2010). Ms. Paul is responsible for EPA implementation at the Secretariat.

Fund (EDF). However, a sum of €165 million is allocated for the CARIFORUM Regional Indicative Program (RIP) up to 2013 to be distributed in what is termed Focal and non-Focal areas. The EU's Regional Strategy Paper (RSP) specifically identified the objective of the funding being provided, but the CARIFORUM State had to decide how the allocation would be made in the Focal areas. The non-Focal Area received €22 million for the purposes of attending to the issues of vulnerabilities and social problems of dislocation, while €143 million would go towards increasing regional competitiveness in trade and the production of goods and services to achieve a deepening and widening of the regional Integration process⁴⁴¹. Of the total sum allocated €72.6 million or 44% will be employed into development of EPA projects and implementation. Under the 10th EDF there is also an allocation of €480 million for the National Indicative Programs (NIPS) while the United Kingdom and Germany have provided an additional sum of €26.8 million from their Aid for Trade (AFT) support program.. Other European Member States such as France and Spain have made pledges under their aid for trade strategy for the 2007 package. But so far only the sum of €580 million had been clearly identified for funding for EPA implementation under the aid for trade initiative...

The region and its donors developed an integrated approach to the allocation of the regional funding under the EDF. The funding arrangement was not only designed for CARIFORUM states but also to include the Overseas Countries and Territories (OCTs) of the European States and to promote the relations of the EU in the wider Latin American and Caribbean (LAC) context. The financial protocol has identified six (6) main areas for the distribution and spending of the allocated sum of €165 Million. (1) Deepening of the economic integration within the OECS (2), CARICOM Trade and support for the establishment of the Caribbean Single Market and Economy (CSME) (3).

⁴⁴¹ European Community- Caribbean Region. Regional Strategy paper and Indicative Program 2008-2013 http://ec.europa.eu/development/center/repository/scanned_rgCARAI_rsp_2007-20013_en.Pdf. (May 20, 2009).

Intra-CARIFORUM economic and social cooperation (4), a program for cooperation among CARIFORUM states, within the wider context of Latin America and the Caribbean, (5) EPA implementation and accompanying measures and (6) Investing in human capital⁴⁴².

There was no further guaranteed of funding from the EU for EPA and EPA related implementation activities after 2013. So the regional leadership must therefore take steps to ensure that there are funds available for implementation, because while the definition of Aid for trade is still not clearly defined, there exist the risk that potential donors within the EU may in the face of global recession, retrench their budgetary commitment for aid for trade⁴⁴³. However, the Caribbean Development Bank, (CDB) has undertaken a project to finance capacity building in human resources for EPA implementation under the Caribbean aid for trade and Regional Integration Trust (CART) Fund. The development chapter of the agreement focuses heavily on the financial and technical support for implementing the EPA, and has identified the priority areas for developing export⁴⁴⁴. Funding for the projects will be facilitated under the 10th EDF and the promised Aid for Trade initiatives of EU Member States.

Each State will receive funding as specified in their National Indicative Program (NIP) as set out in the various strategy documents covering the period 2008-2013; for the 10th EDF. However, while each State in the region has commenced their implementation processes, the funding mechanism is very slow in responding to the request for support.

⁴⁴² European parliament: the CARIFORUM EU Economy Partnership Agreement (EPA): the development component. Director-General for external policies of the union. Expo/B/DEVE/2008/60.PE406.994. March 2009 www.odi.org.uk/resources/download/3222.pdf. (April 19, 2010).

⁴⁴³ Ibid.

⁴⁴⁴ The area identified for priority treatment are: technical assistance to build human, legal and Institutional capacities to comply with the EPA, support for fiscal adjustment and reform, promote private sector and enterprise development (to include diversification by new investment and development of new sectors, enhancing technical and research capabilities and support trade infrastructure.) Implementation of the EPA to include (legislative, institutional, administrative and technical support) upgrading productive capacities, Implementation of trade-related rules, business support and diversification, Research development and innovation transfer, business climate/competitive enhancement, investment support, promotion of regional integration, and creation of regional development financing mechanism within 2 years.

The region proposed the creation of a “special window” within the establishment of the CARIBBEAN Development Fund (CDF) through which the EPA funding could be channelled so as to speed-up the request and disbursement procedures. This proposal is still being considered. However, France and Spain have not yet declared their contribution for Aid for Trade package for the CARIFORUM State and the Road map for EPA is still been debated within the European Union⁴⁴⁵.

4.2.4. The role of the Regional Preparatory Task Force (RPTF)

The Regional Preparatory Task Force (RPTF) was established under the Cotonou agreement for the purposes of facilitating the development of the design for the EPA and defined the development finance cooperation between the CARIFORUM States and the European Union. The RPTF assumed a facilitating role during the course of the negotiation for the EPA. It had a mandate to identify and translates the need for support into practical mechanisms to assist trade related and development⁴⁴⁶. Since the signing of the agreement on October 15 2008 the CARIFORUM-EC Joint Regional Preparatory Task Force has undertaken twenty (20) studies covering all 14 signatory CARIFORUM signatory states, the purpose of which is to determine the extent of the needs of national government and regional institutions to implement the EPA, and to address the effects.

The implementation of the EPA therefore is to a large extent dependent upon the work and recommendations of the RPTF as the purpose of these studies is to provide donors with a better understanding of the regions needs⁴⁴⁷. After these are completed the report would be discuss at the regional level and the COTED would decide and adopt those recommendation to be acted upon.

⁴⁴⁵ Ibid.

⁴⁴⁶ Edwin Carrington speech to the 5th Regional Preparatory Task Force meeting, 28 September 2006. Georgetown Guyana.

⁴⁴⁷ CARIFORUM Update on Economic Partnership Agreement presented to the 88th session of the ACP council of ministers Brussels, (15-18 December 2008).

4.2.5. The Adjustment processes and schedules

The adjustment process for the implementation of the EPA across the CARIFORUM States will affect three main areas of their economies namely: export potential, social cohesion and potential impact on revenue.

The adjustment period extends up until 2033, and therefore the processes will have short-term, medium and long-term challenges which the region must face. In as much as there are clearly defined direction in which the implementation is focussed, the actual measurement of the reforms remains in the realm of possibilities because of the unpredictable nature of the medium and long-term variables.

Take for example the liberalization schedule which will take several years to be completed and will affect the functioning of the yet to be implemented CARICOM Single Market and Economy (CSME). The negotiation of the EPA had taken account of the fact that the EPA though intended to facilitate regional integration could not be allowed to undermine the CARICOM Institutional arrangements one of such being the Single Market and Economy (CSME). One of the difficulties faced by the implementation process is that under the Treaty of Chaguaramas provisions are made for differential treatment between the LDCs and the MCDs of the region and such obligations cannot be usurped by the EPA. However, these problems are compounded by the fact that, in as much as the CARIFORUM-EU EPA is a region to region arrangement, the CARIFORUM internal arrangements bear no Supranational Institutions which can bind the region as a whole, as in the case of the European Union. Therefore, each Member State of CARIFORUM is responsible to take steps to implement the agreement in its own territory. Further, each States has obligation under the Treaty of Chaguaramas with respect to the Common External Tariff (CET) and the preferential treatment afforded to the regions LDCs.

The preferential treatment intra-regional is specific to the LDCs and is based on their level of development by CARICOM standards. While the EPA being a Free Trade

Agreement, which recognized the degree of asymmetry between the two region and not country to country provide special arrangement for the adjustment of tariffs in the context of liberalization of "substantially all trade" to satisfy the requirement of WTO region. It seems therefore that the provision of the Treaty of Chaguaramas which allows for the special and differential treatment of the LDCs will be subsumed in practice by the EPA as each member State of CARICOM will have to liberalized tariffs to meet the obligation of the EPA, and to the degree that it liberalize to Europe, it must provide a similar liberalized regime to the Member State of CARICOM, and also to Dominican Republic which is not a member of CARICOM, but is a part of the CARIFORUM States for the purposes of the EPA. In this regard one of the foreseeable challenges in implementing the EPA is the preferential treatment accorded to the LDCs of the region under the Treaty of Chaguaramas. There seems to be no clearly defined approach to deal with these inconsistencies. However, it seems difficulty to accept that the Treaty of Chaguaramas should be breached in favour of upholding the terms of the EPA, because one of the basic tenets of the EPA is to promote regional integration and for the region to determine its own model of integration and their pace of integration. Therefore, to amend the Treaty to facilitate the EPA would seem unacceptable. However, it seems that the Joint CARIFORUM-EC Council can find solutions to these problems by applying the principles of Special and Differential Treatment recognised in global trade rules to address these potential problems.

4.2.6 The Political Challenge

The implementation process requires that CARIFORUM political leadership must take some tough decisions if the process is to proceed at a pace to produce the intended benefits. Their first major hurdle is how to calibrate the fusion of the CARIFORUM commitments and the CARICOM Institutional arrangements. Take for example, the Dominican Republic has a Free Trade Agreement with CARICOM which has not been fully implemented, since it was signed in 1998, provisions of which have been used to assisted the CARIFORUM States is satisfying the WTO compatibility and the principles

of liberalization of “substantially all Trade” requirement of the EPA. The Dominican Republic, being a contracting party under the Central American Free Trade Agreement (CAFTA) with the USA had made a huge sacrifice and offer to the CARICOM States to ease the difficulties faced by some Member States of CARICOM in meeting those requirements⁴⁴⁸. In light of these, the Dominican Republic felt that it has a legitimate expectation to be treated equally as any Member State of CARICOM even though it is not a formal Member of the Group. This therefore has shifted the focus from the economic question to a political dimension, because the demands of the Dominican Republic(DR) is tantamount to seeking Membership in CARICOM, an issue which the Community does not seem ready to address⁴⁴⁹.

The political economy of CARICOM in the context of its relation with the Dominican Republic must be tackled at the regional level as it appears that it was never the intention of CARICOM to extend the offer of Membership to the Dominican Republic, hence their free trade agreement to develop trade relations for the deepening and widening of CARICOM⁴⁵⁰. But in light of the Cotonou Agreement and the CARIFORUM-EU EPA, the political dynamics have changed and the Dominican Republic has expressed an interest in joining the Caribbean Community (CARICOM) mainly for economic and politically strategic alliances⁴⁵¹. However, CARICOM, though conscious of the contribution of the DR in the negotiation of the EPA, seems very slow to agree membership for the DR. So, while the CARICOM States have established an implementation unit to coordinate the EPA at the CARICOM regional level, there is no finality on the question of the CARIFORUM coordinator under the EPA. But, a CARIFORUM deputy Secretary-General is appointed to the Secretariat in Guyana.

⁴⁴⁸ Interview- Ambassador Fredric Cuello, May 15, 2009. New York.

⁴⁴⁹ Interview- Sir Shirdath Ramphal, June 9, 2009. Barbados.

⁴⁵⁰ Ibid.

⁴⁵¹ Interview- Ambassador Fredrico Cuello, May 15, 2009. New York.

The problems of the region in implementing the EPA, is also connected to the Dominican Republic's desire to obtain similar treatment as that which is granted by the CARICOM States to each Member and also to the EU. This, notwithstanding the CARICOM-Dominican Free Trade Agreement which has not been implemented since signing. the DR is demanding equal treatment in the spirit of the EPA and Further, it has objected to the CARICOM Secretary-General being in charge of the regional implementation processes and questioned the efficacy of the CARIFORUM Secretary-General being vested is the same official who is also the Secretary-General of CARICOM⁴⁵². These political question must be address by regional governments, because as the Caribbean and the EU sought to redefine their external relation, the issue of the Caribbean Commonwealth States are made to be connected in the wider Latin American context⁴⁵³. This development is intricately linked to the EPA and its implication for the Caribbean States in the global political economy. But, these linkages area part of the EU's strategy and so is the establishment of the institutional framework to guide the implementation of the economic and political aspects of the relationship. The roadmap for implementing the EPA was held at the EU awaiting approval before it can be implemented; yet the region is pressed to implement the EPA.

The joint CARIFORUM-EU Council of ministers has not met and it is this body which must provide institutional directions for the implementation of the EPA. However, this seemed to be part of the difficulties being experienced in the fundamental differences which exist between the CARICOM States on the one hand and the Dominican Republic⁴⁵⁴ on the other.

⁴⁵² European Parliament: Director General for external policies. Expo/B/DEVE/2008/60 March 2009. p. 40.

⁴⁵³David Jessop "what happen to the EPA?" *Trade negotiations insights* Issue 3. Vol. 9. April 2010. www.ictsd.net/news/tni (April 10, 2010).

⁴⁵⁴ Ibid.

4.2.7 The role of the regional governments in implementing the EPA

The Governments of the CARIFORUM States are expected with the support of the EU to create the legal framework and policy space to facilitate the private sector in taking advantage of the opportunities of the EPA.

In the case of Barbados, Dominican Republic (DR), Jamaica and Trinidad and Tobago, the governments have established committees to pilot the implementation process by interacting with the Private Sector Groups and Non-Governmental Organization (NGO's) in each State. In Jamaica for example, the cabinet has mandated the establishment of a Technical Working Group (TWG) with membership drawn from line Ministries which have a role to play in the implementation of the EPA .These include Ministries of Agriculture, Culture, Finance, Foreign Affairs and Foreign Trade, Investment and Commerce and Tourism are charged with the responsibility to develop a national implementation matrix which sets out the legal obligation required to implement the EPA by each relevant Ministry or Government Agency within a timeframe. The work of the TWG is ongoing and the Ministry of Foreign Affairs and Foreign Trade has established a unit to focus on the implementation of the EPA and all other Trade Agreements to include the CSME.

There is therefore a collaborative approach in Jamaica to the development of the matrix for implementation of the EPA to include the office of the Prime Minister, (OPM) the planning Institute of Jamaica (PIOJ) with responsibilities for developing the program for capacity- building to deal with the supply side constraints of the Agreement. Jamaica Trade and Invest (JTI) has responsibility for market intelligence and exploiting market opportunities under the EPA. While the TWG, in the case of Jamaica has submitted proposal to the cabinet's Internal Relations and Trade Committee (IRTC) on the matrix of implementation for final approval with a rescheduling of time lines. In addition, the government has appointed a national coordinator and has so notified the European Commission.

The work of the TWG has continued to focused on the immediate actions which need to be taken mainly in the areas of sanitary and pystosanitary measure (SPS), Technical Barriers to Trade (TBT) and mutual assistance in customs issues and Services related matters⁴⁵⁵.

The removal of other duties and charges (ODCs) is another area in which the TWG has focused its attention; however, there are several outstanding areas of legislative reforms which are to be addressed to include the customs Act to reflect the new tariff arrangement which are critical to the next phase of liberalization to take effect 2011.

In the areas of mutual recognition in service it is the policy of the Governments of the region that the professional grouping so affected should take charge and 'drive' the process to implement the mutual recognition in service agreement. In this regard, the professional groups were invited to establish their standards in collaboration with their counterparts in the EU. These areas have been identified as priorities for implementation within three years of the Agreement. However, Jamaica's private sector activities are driven by the national export strategy⁴⁵⁶ and for the private sector to respond effectively there has to be a concerted effort on the part of the regional Governments to speed up the implementation of the CSME. The private sector within the region seemed sceptical about the pace of the implementation process of the CSME⁴⁵⁷ because progress in implementation of the national level is very slow and indeed, inactive in some territories. However, most Member States in the region have established some mechanism to commence implementation of the Agreement.

⁴⁵⁵ Presentation by Ambassador Wayne McCook to the CARIFORUM Implementation seminar, Kingston May 20, 2009.

⁴⁵⁶ Interview - David Prendergast. 15.4.2010 Kingston.

⁴⁵⁷ CARICOM Press release 286/2009. July 15, 2009. CARICOM Secretariat .Statement by Mr. Lawrence Plcide, President of the Trinidad and Tobago coalition of services industries, at the opening ceremony of the Regional services symposium, 16-17 July, St. Johns, Antigua and Barbuda.

4.2.8 The role of the Private Sector Stakeholders

It is generally accepted across the region that the role of the private sector is very crucial to the effective implementation of the agreement, but even more so the importance of the business community in discussing the opportunities under the EPA so that each State within the regional configuration can benefit from the arrangement.

In the case of Barbados, for example, while the Government through the Ministry of Foreign Affairs and Foreign Trade along with other key Ministries has spearheaded the implementation process, the private sector has made a tremendous impact⁴⁵⁸.

The Barbados private sector has secured funding for its projects to foster the implementation of the EPA, but argue that the process to obtain funding is very time-consuming. They however have underscored the need for assistance to improve the competitiveness of businesses in Barbados to take advantage of the EPA. So the core areas which they have identified for action include the following; removing the constraints to trade in order to capitalize on the opportunities offered under the EPA, build institutional capacities to establish standards, sanitary and phytosanitary measures, develop the export services industries for example in the areas of music, film and fashion, training of staff within the key export sectors and to acquire technical expertise. In addition to coordinating with the Government of Barbados through the Ministry of Foreign Affairs and Foreign Trade, the private sector group also coordinate externally with the OECS Businesses Council and the Caribbean Association of Industry and Commerce.

The approach to implementation taken in the Dominican Republic is similar to the other leading States in the CARIFORUM Group of States. There the Ministries of Agriculture, Foreign Affairs and Trade are playing a lead role in the implementation of the EPA, so

⁴⁵⁸ The Barbados chamber of Commerce, the Coalition of Service Industries, the manufacturers Association, the agricultural Society, The Private Sector Trade team (PSTT), Small Business Association, Barbados are all Development cooperation, and Invest Barbados are all functioning as part of the Barbados sector bodies involved in the implementation of the EPA.

also is the Custom Department. The role of the private sector is well defined and is led by the National Council of Private Enterprises (NCPE) and the Chambers of commerce⁴⁵⁹.

In the case of Trinidad and Tobago, Private sector interest and Government sectors have worked in collaboration to implement the EPA. The Trinidadian model mirrors that of Jamaica in many respects, with the establishment of an implementation unit in the Ministry of Trade and Industry (MTI). The functions and objectives of the unit are well defined; and all embracing and include; ensuring that the country's obligations are met in a timely manner, coordinate activities of Government department and agencies, take and receive submission on all EPA related issues and relate to the CARIFORUM EPA Secretariat; to coordinate with the Ministry of Trade and Industry in all EPA related public education initiative and serve as the main point of contact for EPA related activities. The Trinidad and Tobago manufacturers association (TTMA) has the responsibilities to ensure that the interests of the manufactures are protected in both the negotiation and implementation phase of the EPA⁴⁶⁰.

In the case of Guyana, the government has established an Implementation unit within the Ministry of Foreign Trade with the primary responsibilities of coordinating private sector and government initiative to give effect to the provisions of the EPA. The main stakeholder being the Guyana revenue Authority, the Guyana customs and the ministries of Trade Industry and Commerce, Finance, legal affairs, Foreign affairs. Also the Guyana Bureau of Standards, the private sector commission, trade unions and CARICOM Secretariat. In all the territories of the region to include Suriname, there are private sector led initiatives to implement the EPA. However, while their efforts are very important to the implementation process the cost of implementing the EPA is not fully assessed and therefore all the agencies, government departments and private sector

⁴⁵⁹ Presentation by Ambassador Fredrico Cuello to the CARIFORUM Implementation seminar, Kingston May 20, 2009.

⁴⁶⁰ Interview with Greg Lockey. President of the T&T. manufacturers association June 16, 2009 Port Of Spain. Trinidad & Tobago.

entities are in need of funding and technical assistance to give effective guide to the implementation of the Agreement. The region's reliance on the EU and its Member States for financial and technical support for the implementation of the EPA is quite substantial, but the full extent of each countries need is not yet quantified. The Eastern Caribbean States have been quite slow in developing their implementation process, because of funding and lack of technical assistance and human resource capacity. St. Lucia has confirmed its financial need through their implementation matrix; but its activities are being coordinated through the OECS Secretary which has linked its implementation Initiative with the program established under the CARICOM Secretariat.

In the main, private sector initiatives and activities across the region seem sporadic, tentative and lukewarm, with the exception of some States, namely Barbados and the Dominican Republic there is a sense that the private sector is looking to government for leadership or simply just “waiting for something to happen”⁴⁶¹.

4.3 The Institutional Framework: The Joint CARIFORUM-EC Council

There seems not to be any clearly identifiable source of funding for the establishment and functioning of CARIFORUM-EPA Institution. The Agreement provide for the establishment of several bodies with defined functions and categories of membership; namely., the Joint-CARIFORUM-EU Council, the Trade and Development Committee, the Joint Parliamentary Committee and the CARIFORUM-EC consultative Committee. At the Ministerial level, the Joint CARIFORUM-EC Council which will be responsible for policy decisions and shall provide overall oversight of the operations of the agreement. The Joint Council is the overarching body for the implementation process and in effect is the highest decision making authority within the context of the agreement. It will be comprised of ministers of all fifteen CARIFORUM States and the European Union Member States, along with European Commission; and it shall meet at least once per month. The rules of procedure are still being developed and therefore after twenty

⁴⁶¹ Jessop, David, “Whatever happens to the EPA?” *Trade Negotiations Insights* Vol.9. (April 2010).

months since the agreement was signed, the body has not yet met. The agreement established Joint CARIFORUM-EC Council to deal with major issues, conflict or any other bilateral, multilateral or international development that might affect the implementation and functional operation of the EPA. However, there is no clear guideline as to how these rules are being developed. But what is clear is that the European Union is playing a major role in the development of the rules and will no doubt have the majority of members. It would therefore be very interesting to examine the proposed voting rights or principles of the decision making within the body. All the Member States of both sides will be represented, CARIFORUM fifteen and the EU twenty seven. The interesting development is that while the Commonwealth of the Bahamas will sit on this body, it is neither a Member of the WTO nor the CSME, while the Dominican Republic though a Member State of the WTO and CAFTA and is also a contracting party to the Free Trade Agreement with CARICOM, but it is not a Member State of the CSME. The function of the ACP-EU, Council of Ministers is preserved because the Joint CARIFORUM-EC Council will report to the ACP-EU Council of Ministers. However, the authority of the Treaty of Chaguaramas in some respect is undermined, because the decision of the CARIFORUM-EC Council is binding on the parties in the context of the global trade arrangements for RTAs

4.3.1 The Joint CARIFORUM-EC Trade and Development Committee

The Joint CARIFORUM-EC Trade and Development committee is established to monitor the implementation of the EPA and to be the administrative arm of the Institutional mechanism. It reports to the Joint CARIFORUM-EC Council. The development of its rules of procedure are well advanced however, this body cannot be inaugurated prior to the Joint CARIFORUM-EC Council to which it shall report. The committee is comprised of senior officials from both sides and is the executing arm of the Joint CARIFORUM-EC Council.

4.3.2 The Joint CARIFORUM -EC Parliamentary Committee

The Joint CARIFORUM-EC Parliamentary Committee is comprised of European and CARIFORUM Parliamentarians who will meet and exchange views. This institution seems to mirror the Joint Parliamentary Assembly which exists currently in the context of the Contonou Agreement. Like the other Institutional bodies, this body has not yet convened, however the rules of procedure are being developed. Because of its function, it cannot proceed unless the other bodies have convened. The Parliamentary Committee will be able to request information regarding implementation of the EPA from the Joint Council, and be kept informed of their decisions; it can also make recommendations to the Joint Council and the Trade and Development committee. Therefore the functions of the parliamentary committee cannot be carried out unless the Joint Council and the Trade and Development Committee are in place. It is therefore left to the CARIFORUM State to decide on the persons who would represent each Member State on this body.

4.3.3 CARIFORUM-EC Consultative Committee

The CARIFORUM-EC Consultative Committee is to function as a consultative body to the main Institutional bodies under the EPA. However, it is not yet constituted nor convened. Its membership will comprise organizations from civil society to include academics and other social and economic partners and it shall promote dialogue and cooperation and may make recommendations to the Joint CARIFORUM-EC Council and the Trade and Development Committee. There is no clear expression of the cost of implementing the Institutional framework of the Agreement.

The extent to which the Consultative Committee will influence decision making at the level of the Joint Council, though not clearly define in scope and operation, it seems to form the basis for deep involvement. It would be interesting to know the depth of transparency which will be involved in certain areas of decision making such as for

example, the persons to make up the panel of arbitrators to be appointed to address disputes arising under the EPA. What role if any, will the Consultative Committee play?

4.3.4 The Special Committee on Custom Cooperation and Facilitation

Special committee on Customs cooperation and Trade Facilitation is established to implement the custom and Trade Facilitation chapter of the Agreement. Article 36 (1) establish a special committee on custom cooperation and trade facilitation “and it shall be comprised of representatives of the Parties. It reports to the Joint CARIFORUM-EC Trade and Development committee and has five specific function among which it will “monitor” the Implementation and administration” of custom and Trade facilitation. So while it is empowered to meet and decide its own Agenda in advance of the parties meeting to establish the other Institutional arrangement of the EPA..

4.4 Implementing the financial package

The full extent of the financial package required to implement the EPA is yet not determined neither is the cost in lost revenues to State Governments because of the liberalization of Trade in Goods and Services. The immediate, medium term and long term financial cost of implementing the EPA across the region must await the completion of twenty studies undertaken by the Regional Preparatory Task Force (RPTF)⁴⁶². So, while the European has identified two clear source of funding and the possibilities of a third source being other international donor agencies; there are no guarantees beyond the 10th EDF and Aid for Trade support from EU member States.

⁴⁶² The studies cover the following area of the EPA. Competitiveness and innovation, Customs and Trade facilitation competition policy, public procurement, technical barriers to trade sanitary and phytosanitary measures for fisheries access to the EU markets, Agriculture, fisheries, investment and business facilitation, trade in services, regional investment promotion, information society, cultural Industries, innovation and renewable energy intellectual property, environment, social aspects protection of personal data, science and technology and good governance. These studies have already been completed.

Further, there seems to be no real connection between the work of the RPTF and the funding being made available under the current EDF program; because it is by virtue of the studies undertaken by the RPTF that the region will inform itself, Europe and other donors of the detail need of Implementing the EPA. But, what seem clear is that the funding made available under the 10th EDF will be quite inadequate to implement the immediate and medium term costs and there is no other EDF funding until after 2013 and even then, there is no commitment to make funds available under the EDF post 2013.

The completion of the RPTF studies will also inform the EPA Implementation road map on the question of cost to implement the agreement, but CARIFORUM State must first agree on the road map before the process can commence in earnest but the road map is still being held up. Take for example the case of St. Lucia which is one of the smaller States within the OECS sub grouping of the CARICOM member States, although their national implementation unit was established in February 2009 and they have identified the immediate task of implementing the EPA and budgetary requirement by developing a matrix for the process of implementation, funding remains very challenging. From that matrix, the cost of improving Agriculture and fisheries competitiveness along with the cost of enhancing the quality of traditional agricultural products is estimated at €6 million. This is but a small component of the matrix is among the smallest Member State of the CARIFORUM group.

The CARICOM Secretariat has estimated that the cost to implement capacity building in fiscal infrastructure, establish a private sector development fund and promote regional integration is approximately €401.4 million and for the implementation of those studies already completed, the RPTF has estimate that the cost is between €121-125 million⁴⁶³.

The real challenge in implementing the EPA is two fold. Firstly, among the identified EU sources, of funding namely; the EDF, and Aid for Trade, the EDF has a very poor record

⁴⁶³ Ibid.

of bureaucratic inefficiencies and slow response to request and so also, with regards to the Aid for trade its definition and scope are still in dispute. So therefore, the availability of these promised sources remains uncertain.

Funding is also expected from the Inter-American Development Bank (IDB), Canadian International Development Agency (CIDA), and the United States Agency for International Development (USAID), World Bank, IMF, UN, France, Germany and Norway, Spain, and also Aid for support from china and India under their Aid for Trade programmes, but there seems to be no clearly defined time schedule. However, the implementation processes cannot be delayed indefinitely.

Secondly, the Caribbean States had pinned their hopes on the expected Aid support when they agreed to signing the EPA quite cognizant of the fact that they could not finance the obligation which they had under taken within the ambits of their own Tax revenue bases. Concerns had being raised with respect to the conduct of some EU Member States and their commitment to aid for trade, because, of all those States which made lofty promises of bilateral and discretionary support for EPA, only two European Union Member States had honoured their pledge of support namely; Britain and Germany.

Further, there seems to be no clear way forward as to how the EU will provide the much vaunted €1 billion for their Aid for Trade promise of support. The region is concerned that after four months within the calendar year 2010, when this sum is to be provided outside of the funds provided in the 10th EDF, there was no allocation for the CARIFORUM State from the EC. However, CARIFORUM States were still concerned that the greater portion of the EC funds will go to Africa in light of the Euro- Africa political priorities.

There is also the lingering fear that as the global recession settles, Some Member States of the European Union and other donors may re-package their Aid for Trade

support and subsumed those commitments into the general aid funding⁴⁶⁴. Against this background however, China has decided to step up its campaign to keep the Aid for Trade momentum going in light of the international economic crisis. China argued that the economic crisis will hurt the poor countries who will suffer most and it's therefore incumbent that the WTO should intensify the momentum on aid for trade⁴⁶⁵.

Europe has responded to some of the challenges being faced by the ACP States, in this regard and move particular to the CARIFORUM States as their commitment in the EPA is far more extensive than most of the other ACP configuration of States. The EU had identified two approaches to address the slow and bureaucratic mechanism of delivering external assistance. The first approach is to direct its funding to ACP States through budgetary support directly to government and secondly through a regional development fund. These are separate initiatives from the support provided through the European Investment Bank (EIB) which has committed €2 billion for investment purpose in the ACP States. But Europe seems well aware that with the exception of the Dominican Republic, Trinidad and Tobago and to a lesser degree, Barbados, the prospect for the new investment generally on a wide scale is not quite encouraging for the CARIFORUM region.

Allocations have been made for budgetary support in most States of the region by the European Union. However, with respect to the proposal to open a special window within the Caribbean Development Fund (CDF)⁴⁶⁶ to channel aid for trade support from the European Union, there has not been any decisive position as a matter of policy or directions emanating from the European Union. However, as previously noted, the United Kingdom has made the sum of £5 million available through the establishment of

⁴⁶⁴ David Jessop. "Whatever happens to the EPA?" Op. Cit.

⁴⁶⁵ China's ambassador to the WTO Sun Zhenyu's addressed to the WTO meeting on Aid for Trade on February 27, 2009. Reported in the China Daily Feb. 28, 2009. www.chinadaily.com.cn/bizchina/2009-02/28/content_7522726.htm. (April 22, 2010).

⁴⁶⁶ The Caribbean Development Fund was established in July, 2008. The purpose of the fund is to provide financial and technical assistance to countries, regions and sectors which are disadvantaged as a result of the deepening of the integration.

a Caribbean Aid for Trade and Regional integration Trust fund. (CART Fund) already established, from which the CARICOM Secretariat and other CARICOM States have accessed some funding for EPA implementation projects.

But, while the UK has created a special window; the European Union has still not decided how it will proceed. What is clear however, is that the European Union will not create a new mechanism or Institution for funding the EPAs. This has been a long standing EU policy for which all suggestions for changes had been strongly resisted.

It is argued that the CDF may not be the appropriate mechanism to channel the new source of funding, because, in its current form, it was designed to benefit the LDCs of the region, but it seems that the structure can be reformed so as to facilitate a speedy disbursement of EPA funding allocations from all sources. As of now, the bulk of the EU funding for the implementation processes is being channelled through the National Indicative Program (NIP) of each CARIFORUM State and the regional Indicative Program (RIP) through the CARICOM Secretariat.

The sum of €580 million has been clearly earmarked for CARIFORUM EPA Implementation up to 2013. However, while the Contonou Financial protocol will continue to 2020, it is still doubtful whether the sum allocated will be made available to the CARIFORUM States on time to be effective; and further to what extent the EU's pledge of € 1 billion to Aid for trade in 2010 will materialize along with the amount of €2 billion pledged Globally for Aid for trade to developing countries within the WTO. It is not clear what amount will be allocated to the CARIFORUM States.

The diversity of Aid donors to the region necessitated a coordinated approach to streamline the Aid fund for more effective application, accounting and coherence in keeping with the Paris declaration⁴⁶⁷. The region has benefited from Aid from the multiplicity of donors but seems not able to measure its effectiveness and application, or even to

⁴⁶⁷ The Paris Declaration on Aid effectiveness February 2005. www.oecd.org/dataoecd/11/41/34428351.pdf (April 20, 2010).

better inform donors when requests are being made. This incoherence will impact implementation of the EPA as the region sought to extend the sources of finance beyond the EU and its member States. The extent to which Europe delays making vital decision on the future of the CARIFORUM EPA Implementation support, the CARIFORUM States face the risk of been out paced by the more aggressive and free trading business of Latin America⁴⁶⁸. Further, there is more multinationals operating in Latin American than those operating in the CARICOM States⁴⁶⁹, these companies are better able to compete in European Markets due to economies of scales and Labour cost inputs in many areas of production compared to what exist in the CARICOM States. The Caribbean is therefore at risk by the delays in implementing the EPA.

4.5 Implementing the Caribbean Single Market and Economy (CSME)

There is an implementation deficit with respect to the CSME which was launched in 2006 and should have been fully implemented by 2008. This has not happened in time, in order for the region to concentrate on implementing the EPA, and so completing the EPA has seemingly placed the CSME and the EPA on a collision course, in circumstances where the lack of funding and political commitment to the CSME have created an atmosphere in which the EPA institutional arrangement are likely to overhaul some aspects of the CSME and indeed the revised Treaty of Chaguaramas. The political dilemma for CARICOM is how to implement the EPA and at the same time avoid undermining the CSME and the revised Treaty of Chaguaramas. The region must therefore muster the political will to complete the CSME process without further delay and establish a body with supranational status to have full responsibilities for the proper function of the internal market of the CARICOM States. This, however would necessitate some adjustment to the Treaty of Chaguaramas or indeed a new Treaty arrangements specifically to addresses the question of intra-regional trade and market and market reforms.

⁴⁶⁸ David Jessop. "Whatever happens to the EPA?" Op. Cit.

⁴⁶⁹ Ibid.

The initiative would have to be undertaken before the region completed its negotiation with Canada for a new trade arrangement, as this could create the opportunity to re-order the Caribbean Development Fund(CDF) to receive funds for Regional Trade and Trade related facilitation to include EPA and CARIBCAN implementation. At the launch of the CSME on Jan. 20, 2006, Prime Minister of Jamaica Hon. P.J. Patterson had remarked that “..the implementation of the single market will result in unprecedented market access for our goods and services and a marked expansion in our business large and small, traditional and non traditional”. It was the hope of the region that full implementation of the CSME would have taken place before the EPA negotiations were complete. In light of the failure so to do, the region has faced a serious challenge to implement the CSME while addressing the needs of the EPA obligation. The pressure that is brought to bear on the CARIFORUM States to implement the EPA will no doubt affect the implementation of the CSME.

4.6 Regional foreign policy and development

Under the revised Treaty of Chaguaramas the Member States have agreed to coordinate their foreign policy to present a united front, in their response to the International Community. The extent to which the lack of foreign policy coordination exist in the region to drive its desire for economic gains in trade and development is a factor which has affected the implementation of the EPA. The weak foreign policy positions across the region had affected the negotiations for the EPA and it is a material fact that the implementation of the EPA has suffered from a funding deficit and so, it seems very vital that the region’s foreign policy initiatives should be geared towards enhancing the development fund from bilateral and multilateral sources. It must therefore continue to push for the implementation of the Doha Development Agenda, and also to focus on increasing its South-South involvement. It must seek to deepen its relation with countries in the wider Caribbean and South American region in order to support the cooperation needed to foster regional Integration and trade opportunities.

4.7 Public education

The Caribbean has enjoyed an extended period of protection and preferential non reciprocal trade arrangement, about which the public and businesses were aware and took advantage of these export opportunities offered under Lomé and Contonou Agreement, the Caribbean Basin Initiative (CBI) and CARIBCAN. It is generally agreed that the information dissemination and public involvement in trade negotiation and implementation is usually indispensable. However, this aspect of the negotiation of the CARIFORUM-EU EPA was below expectation, and the regional governments should have done more to inform and involve the wider population of the region, more so, the business and commercial community⁴⁷⁰. The region must at this stage of the implementation processes be engaged in a public education campaign, except for the Dominican Republic which had a very high level of public discourse during the regional negotiations, the rest of the CARIFORUM States did not involve the public during the negotiations and therefore had to face very seriously challenges in convincing the public to accept the agreement after it was initialled. The region should implement a campaign to educate the public as it sought to implement the agreement in order for the public to be aware of what to expect arising from the implementation of the Agreement. It is important that regional governments must press the EC to assist in this regard, not only to encourage public awareness, but also to commence the process of democratizing the selection processes of persons to serve on the Joint Consultative Committee and to fill positions for arbitrators which are required under the Agreement.

There are certain existing non-tariff barriers on the European side which must be highlighted, mostly in the areas of processed foods and agricultural products which must be addressed in the familiarization campaign. This will help to reduce the level of frustration the Caribbean entities are likely to face when they attempt to access the European market, both in the areas of trade in goods and services. The public

⁴⁷⁰ Interview with All Caribbean Interviewees: All have agreed that the region could and should have done more to get the public more fully on board and to inform them as to the developments in the negotiations. This is not to say however that nothing was done; but there were serious budgetary constraints.

Education campaign must also highlight the need for the development of the rule of procedure of the Institutional body's to become part of the public discourse so that the principle of transparency in governance which is so cherished by the Europeans be invoked for the better understanding of the various processes on the part of the citizens of the CARIFORUM States. The Dominican Republic has had a very successful public education campaign in this regard.

There is no doubt that the freedom of movement mode 4 is very important for cultural, educational and trade development of the region, and so the governments in their campaign must explain the regime which exists in some States of the European Union which use visa restrictions to undermine the EPA provisions. Indeed Britain which had one of the more liberal visa regime in Europe with regard to its former colonies and Member States of the Commonwealth of Nations has recently commenced a revision of its visa policies with respect to several CARICOM States whose citizens previously did not require visas to visit the United Kingdom. These are very important public issues, which should not escape public awareness during the implementation state. Therefore, the various implementation units within national governments across the region should be provided with the necessary resources, human, technical and financial to mount an awareness campaign as part of its EPA implementation responsibilities; or in the alternative, a special body designed to promote and offer advice on the EPA across the region should be appointed.

4.8 The CARIFORUM-Dominican Republic Free Trade Agreement

The CARICOM-DR Free Trade Agreement was signed in 1998, but has not been fully implemented. The failure of both sides to implement this agreement has led to serious problem in the implementation of the EPA⁴⁷¹. The failure of the Joint CARIFORUM-EC Council to be convened since the signing of the EPA is partly due to the problems that remain unresolved between the CARICOM States and the Dominican Republic (DR).

⁴⁷¹ Press release 328/2008 Nov. 4, 2008 "CARICOM" CARICOM and DR to forge stronger ties".

Under the Contonou Agreement, the DR became part of the CARIFORUM Group of States for the purposes of facilitating the trade and development co-operation with the EC. However, the CARICOM- DR Agreement is a Free Trade agreement between the region and the DR and what has been demanded by the DR is that it ought to be given the same treatment under the EPA as is the case for the formal Member States of the Community and be made no worse off on the question of tariffs than that which is extended to the EU. The Dominican Republic was holding out for a decision on these critical issues before agreeing to the inauguration of the Institutional bodies to oversee and manage the implementation processes; and further, Spain which had more than a passing interest in the Dominican Republic's accession to the ACP Group⁴⁷² and that interest seemingly has extended to the Dominican Republic becoming a Member of the CARIFORUM Group of Anglophone and Francophone States in the Region. However, Spain had not made its contribution to the region Aid for Trade support program since the EPA was signed. The problems for the region is that the DR is making demands which Spain may be able to assist in resolving, because Spain has an interest in the Dominican Republic becoming a full member of CARICOM.

4.9 Competition Commission

The CARICOM Competition Commission (CCC) was inaugurated on the 18th January. 2008, in Paramaribo, Suriname with the swearing-in of the six Commissioners and a chairman⁴⁷³. The CARICOM Competition Commission was established by virtue of chapter VIII of the revised Treaty of Chaguaramas, which requires that each Member State of CARICOM should establish and maintain a National Competition Authority to facilitate the implementation of the rules of competition.

⁴⁷² Interview- Ambassador Fredrico Cuello, May 15, 2009. New York.

⁴⁷³ Dr. Kusho Horahsing, Chairman and six commissioners Patterson K. H. Cheltenham, Dr. Trevor M. Farrell, Mr. Hans Rudolf Lim Apo, Dr. Maureen Pasil, Dr. Barton UA Scotland and Ambassador A.B. Stewart Stephenson. Appointed for 5 years with a possibility of re-appointment for a further 5 years.

Article 171 of the Treaty establishes the CARICOM Competition Commission “..for the purposes of implementing the Community Competition policy”. As the Treaty anticipates an interdependent network of Competition Authorities at the national and regional level with the objective of driving the industrial development of the region to achieve economic and social development of its people. Article 171 (1) sets out the power of the Commission which is to: monitor, investigate, detect and to make determination with respect to imposition of penalties in the area of cross-border transaction, but more particularly to those which have “cross-border effect”; but it does not define nor establish the extent of cross-border conduct to measure cross-border effect⁴⁷⁴.

While the CARICOM Secretariat had issued draft model legislation for the implementation of competition regimes in Member States, there was no mandate for uniformity in establishing these legislative measures, so each Member States developed its regime based on its national needs and priorities. For example, in Jamaica the emphasis was on consumer protection, encouragement of small businesses and monitoring of monopoly conduct, but not to restrict their creation. In deed, while the international trend in anti-competitive regulations is to restrict mergers and also focus on the abuse of dominance, the approach adopted in Jamaica is to de-emphasis merger controls but concentrate on the issue of abuse of dominance.

While, the positions in Barbados and Trinidad and Tobago differ and address the issue of merger control while Guyana has no provision dealing with mergers⁴⁷⁵.

The linkages between the domestic regimes and the Caribbean Competition Commission (CCC) are mandated under Article 173.1 of the Treaty of Chaguaramas, which specifically links the Caribbean Competition Commission to the Caribbean Court of Justice (CCJ) and the Council of Trade and Economic Development COTED by virtue of chapter VII. The Commission, however is not a rule making Authority, but exists to

⁴⁷⁴ Barbara Lee “CARICOM Competition commission: Enhancing competition Enforcement in the Caribbean Community” presentation to the 8th Annual ICN Conference Zurich, Switzerland June 3-5, 2009.

⁴⁷⁵ Fair competition Act of Jamaica (FCA) Fair competition Act of Barbados.

enforce the Competition rule of the Community. The rule making authority is the COTED which by virtue of Article 182 of the Treaty is mandated to develop “..appropriate policies and rules of competition” while by virtue of Article 175 (12) “..a party that is aggrieved by a determination of the commission in any matter may apply to the Court for a review of that determination”. In addition, while the Caribbean Court of Justice (CCJ) may provide relief to an aggrieved party, who “..may apply to the court for an order” of enforcement by virtue of Article 175 (1) which stipulates that where an order of the Commission remains unsatisfied within 30 days of its issuance regarding anti-competitive conduct. It is suggested that here lies the real challenge to implement the Competition provisions of the CARIFORUM EPA regime because the EPA regime seemingly has ousted the jurisdiction of the Caribbean Court of Justice and created a parallel system.

4.9.1 EPA Competition regime

Title IV, Article 125 (1) of the CARIFORUM-EU EPA defines “competition Authority” as the European commission and the EC party, and for CARIFORUM States it means the “Competition Authorities as appropriate” to include the CARICOM Competition Commission and the Commission National de defense de la competencia of the Dominican Republic.

Sub section (2) of Article 125, defines “enforcement proceeding” as any “proceeding instituted by the competition Authority of a party” with respect to breaches of undertaking to “establishing and remedying anti-competitive behaviour” while sub section 3 defines the choice of Competition Law to be applicable. For the purposes of the CARIFORUM-EU EPA, Competition Law includes but not limited to the following: (1) for the EC party Articles 81, 82 and 86 of the Treaty establishing the European Community and their implementing regulation or amendments, (2) for the CARIFORUM States, chapter 8 of the revised Treaty of Chaguaramas, National Competition legislation and the National competition legislation of the Bahamas and the Dominican Republic are the relevant regimes, Bahamas being not a Member of the CSME and

the DR is not a Member of CARICOM, but has a Free Trade Agreement with CARICOM and is a Member of CAFTA.

The sections seem to inextricably bind the dispute Settlement Mechanism of the EPA to the Competition Authority through the CARIFORUM-EC Trade and Development Committee, by stating that “upon entry into force of this Agreement and thereafter, the enactment of such legislation should be brought to the attention of the EC party through the CARIFORUM-EC Trade and Development Committee⁴⁷⁶”.

Article 126 sets out the principles of Anti-competitive practice and the effects on market, and Trade liberalization; and highlights the obligation of each party to take steps to address any “objects or effect” of activities which prevent or substantially lessen “competition in the territory of the other party “as a whole or in a substantial part thereof”.

In the implementation of competition regime, Article 127 of the EPA mandates that the EU and the CARIFORUM State must ensure that within a period of five years of the coming in force of the EPA that they have in force the relevant anti-competitive law within their Jurisdiction and therefore established the body referred to in Article 125 (1). This is a fundamental obligation imposed by the Article which must be achieved in conjunction with the institutional framework of the Agreement more particular with the powers vested in the Joint CARIFORUM- EC Council and Committee for the Trade and Development.

Article 127, therefore sets up two phases of the implementation process, the first will take up to five years after the coming into effect of the Agreement, when Article 128 becomes operational through the mechanism establish under Article 125 (1), and the second phase coming within six years of the implementation of Article 125. Therefore, after eleven years, there will be an overhaul of the entire regime. Article 128 addresses

⁴⁷⁶ Article 125 (3) (a) (b). CARIFORUM-EU, EPA.

the condition and processes for exchange of information and enforcement of the competitive provisions. However the fundamental strictures on CARIFORUM States to employ their own national policy is imposed by virtue of Article 129 which states that “...nothing in this Agreement prevents a party or a signatory CARIFORUM State from designing or maintaining public or private monopolies according to their respective Laws”. However, with respect to such public or private enterprise which may be created, both the EC and CARIFORUM State shall ensure that the rules of competition do not run contrary to the provision of this Agreement; neither in law nor in fact. But, the derogation section allows for some special rules particular relating to the circumstance of the national regimes; which will not be bound by this provision⁴⁷⁷. Gradual adjustments can be made to the policies and law of each party without prejudice to its obligation under the WTO; to any State monopoly of a commercial nature with a view to make such entities satisfy the condition of competition in providing goods and services in either contracting party within the years of coming into force of this agreement “unless the discriminatory conduct of such state monopoly”, is inherent in the existence of the monopoly in question”⁴⁷⁸. Finally, either party shall report any derogation and “measures adopted to implement” the provision in article 129 (4). This is the extent of the EPA competition regime which affects the CARICOM Competition regime. The impact is as follows: (1) while one of the stated objectives of the EPA is to advance the interest of deepening regional integration, process, the preambular clause of the EPA express the desire “... of facilitating the implementation of the CARICOM Development Vision”.

The provisions of the Competition chapter of the EPA seemingly has fundamentally offended the tenets of the Revised Treaty of Chaguaramas in some material respects, (a) by ousting the original jurisdiction of the Caribbean Court of Justice (CCJ) which is the sole Judicial Authority in the region to interpret and apply the provisions of the Treaty of Chaguaramas and replaced it with the Joint CARIFORUM-EU Council

⁴⁷⁷ Article 129 (3).

⁴⁷⁸ Article 129 (4).

through the operations and function the CARIFORUM-EC Trade and Development Committee, which is an administrative rather than Judicial Authority. Because, the decision of the Joint Council is binding and therefore not subject to any judicial review, and further a similar situation exists with respect to the decisions of the Joint Trade and Development Committee. There are circumstances where a private entity can seek relief in the CCJ against the decision of the Caribbean Competition Commission under the Treaty of Chaguaramas, but no such recourse seems to exist under the EPA regime. In this regard the next element of the inconsistency between both regimes seemingly surfaced, as the EPA regime sets up a parallel system of governance of Competition policy in the region. This is so, because there seemed to be no clear nexus between the EPA regime and that regime established under the Revised Treaty of Chaguaramas.

Further, it seems that where a dispute arises, there are two possible routes to resolution. Firstly, the matter may be referred to the Joint Trade and Development Committee to be resolved within the administrative parameters of the dispute Settlement Mechanism provided therein; or in the alternative to take the route of going through the competition mechanism. This seems to require some clarity; because if the dispute follows the competition regime under CARICOM Treaty arrangements, but has its origins under the EPA provisions, then the matter could possibly find its way into the CCJ via the Caribbean Competition Commission. The CCJ however, has no Jurisdiction to hear matters arising from disputes under the EPA. The question may well be whether the CCJ has any such jurisdiction to hear matters arising under the EPA as it is a creature of the Revised Treaty of Chaguaramas, with its main purpose to interpret the Treaty. In the alternative, any complaint arising under the EPA must take the path of the dispute settlement mechanism. But, there exist some further problem, because that mechanism it seems is designed to deal with state parties and not corporate entities of

a private character. However, it is arguable that the state may take the matter to arbitration on behalf of the private entity as permissible under the WTO regime⁴⁷⁹.

The other area of great challenge in implementing the competition regime under the EPA has its origins in the existence of two other regimes in the region. First, there is the competition regime in the Dominican Republic, and the Bahamas both of which exist independently of the CARICOM regime. Because the Dominican Republic as discussed previously is not a member of CARICOM, but it has a Free Trade Agreement with CARICOM, while the Bahamas, though being a member of CARICOM is not a signatory to the CARICOM Single market and Economy; an institution on which the region's competition is founded. In this regard, serious challenges will be encountered in implement the competition provisions of the EPA because, by its very characteristics, it forces a convergence of extremely complex situation. In that, it has to reconcile and bring together four different and independent regimes, namely, the European regime which is extra territorial, the CARICOM regime, the Bahamas and Dominican Republic regimes all of which touch and concern the administration of the EPA system. This seemingly untenable situation which now hovers over the collective of regimes need further examination and refinement to be able to deliver the anticipated benefit to the CARIFORUM States.

4.10 Competition Policy Coherence and Harmonization of Law

The intent and purposes of the CARICOM Draft Legislations for enactment into National Law is to create policy coherence and harmonization of the various national competition regimes. But, while the CARICOM Competition Commission is not a rule making body part of its function is to encourage the development of the law, practice and procedure for competition in the region. To the extent that the Revised Treaty of Chaguaramas does not expressly confer Supra-national status upon the Commission, it indirectly has

⁴⁷⁹ The EC Banana cases brought by the U.S.A, Ecuador and Guatemala at the W.T.O. augment the EU Banana Regime which gave preferential and non reciprocal benefits to the ACP banana exporting countries between 2003 and 2005 discriminated against them.

supra -nationality in its enforcement functions both at the level of hearing complaints and enforcing decision across the region. Even more so, when the enforcement is by virtue of an order of the CCJ, which is also a supranational Institution in the area of Trade disputes under the Treaty of Chaguaramas.

The European Single Market regime, like the Caribbean Single Market and Economy (CSME) are not Free Trade Area, but indeed one single economic space and therefore their domestic competition regimes are geared to remove market distortion and anti-competitive conduct. The competition law in both regions are not similar in all material respects, however, Europe in ensuring that the CARIFORUM State bring their regime in line with Europe's within Eleven (11) years without any option for discretionary delays beyond that period is pushing the region to adopt an approach to competition consistent with the European model. This approach arguably has removed from the CARIFORUM State their policy space to determine their own regimes best suited for their needs as the Member State or the regional group in accordance with the spirit and dictates of the Cotonou Agreement.

Further difficulties will therefore surface, because the competition regime in Europe is a unitary system, administered under one body and questions of law are interpreted by the European Court of Justice (ECJ). However, the CARIFORUM States do not have a unitary system and notwithstanding a single court to adjudicate on matters of law at the regional level under the Treaty of Chaguaramas, this court has no jurisdiction over matters arising under the EPA.

This raises the further question as to the approach to be taken regarding the area of Other restrictive Regulations of Commerce (ORRCS), both of these are questions of law, which in the case of the national regimes within the CARIFORUM States will be determined by the local courts, but at the regional level the CCJ has competence in these areas.

The EPA is a Free Trade Agreement with a non-judicial process for dispute settlement and therefore to get a pronouncement on issues of law, the costly procedure of dispute Avoidance and Settlement must be invoked. This route can be tailored because competition law can be viewed as Other Restrictive Regulations of Commerce (ORRC) in terms of its main objectives which is to liberalize internal markets where they are inconsistent in the main with the core GATT provision for example in the case of the Most Favoured Nation or National Treatment⁴⁸⁰ regimes. There is also very little differences between the Other Regulations of Commerce (ORCs) and the Other Restrictive Regulations of Commerce (ORRCs) in their application and definition within the context of a Free trade Agreement, but it will come down to a question of what had existed before the establishment of the Free Trade Agreement⁴⁸¹.

The operation of competition the provisions in the case of the Bahamas and the Dominican Republic is that, generally, where there is a commercial presence of an entity in a market, and such presence has caused distortion and anti-competitive activities, but there is a lack of judicial presence within that State in circumstances where the activities are taking place in a Member State of a Free Trade Arrangements, it become very important that there exist some means of cooperation to give effect to these anti-competitive violations⁴⁸².

Therefore, as is the case under the EPA where the Bahamas and the Dominican Republic (DR) are both signatories and neither of these States enjoys the economic space of the CARICOM Single Market and Economy. However the DR claims that it

⁴⁸⁰ Delroy S. Beckford, "Enforcement of competition Law in CARICOM: perspectives and challenges to meet regional and multinational obligations" a paper presented at the Latin America and Caribbean Regional seminar on Trade and competition. Caracas Venezuela 20-21 April 2009. www.sela.org/DB/RICsela/EDOCs/sRed/2009/04/T02360000425-0-Enforcement_of_competition_Law_in_caricom.pdf (April 23, 2010).

⁴⁸¹ Ibid.

⁴⁸² Audel J. Cunningham "competition Policy: Core Elements for CARICOM in the FTAA, unpublished paper. Feb. 2004. (April 23, 2010).

deserves a right of comity with CARICOM, while. CARICOM seemingly is resisting the granting of such claim and is quite slow in according accession to CARICOM by the DR. In the Bahamian situation, it being a Member of CARICOM which has treaty obligation between itself and the DR. The EPA therefore envisage in its implementation, three levels of co-operation in sharing information in competition matters. The Bahamas regime would seek the co-operation of the CARICOM Competition Commission at one level while getting the benefit of co-operation from the DR, through the Commission National de defense de la competencia; at another level, and finally the Bahamas Commission will also have to seek the co-operation of the European regime under the EPA. In this regard the DR and the Bahamas are no different.

Furthermore, because the EPA is a region to region agreement, the EC will only need co-operation of the CARICOM Competition Commission at the regional level, but would still require co-operation of DR and the Bahamas under their regime. But serious constitutional issue may arise, which cannot be dealt with by mere co-operation through the Dispute Settlement Provisions of neither the Bahamas, CARICOM, EC nor DR regimes. In this regard, the existence of a multiplicity of competition regimes across the region has posed some intricate problems.

4.11 Constitutional issues and competition policy: The Right of Audience

Under the Dispute Settlement procedure in the CARICOM Treaty Arrangements, the CCJ is the competent authority to adjudicate on trade disputes between Member States. The presence of natural persons or corporation is severely curtailed and in the case of cross-border trading activities which give rise to dispute involving competition issues, the CARICOM Competition Commission (CCC) would address those matters and appeal would go to the CCJ against the ruling of the CCC, through the aggrieved party's Member State. However; an individual could petition the court directly in four specific circumstances identified as follows: (a) when the CCJ has decided that a benefit or right conferred by the Treaty on a Member State is designed to directly benefit these persons: (b) where these persons have established that they have been prejudiced in

the enjoyment of those rights or benefit, (c) where the Member State which should have brought a claim on the behalf of a person or company has declined or omitted to do so or has expressly consented to allow the persons concerned to bring the claim, and (d) where the CCJ has decided to allow the person to pursue the claim in the interest of justice⁴⁸³. These are important avenues for protection of right of natural or corporate citizens of CARICOM. But, because the court has no jurisdiction over constitutional issues in its original jurisdiction, where a breach in competition regulation results in constitutional rights being abridged; except for citizen of Barbados, Belize and Guyana, all such injury to citizen in the other States of CARICOM must be heard through their national court system and finally to the Judicial Committee of the Privy Council⁴⁸⁴.

Another area of concern for the region in implementing the EPA, is that Article 129, seems to restrict the policy space of the Member State of the region to develop local laws which will address the national needs. The EPA therefore operate to drive national policy makers to develop policies best suited for developed countries and could take national and regional institutions to a level of anti-competitive legislative framework which surpasses their commitments at the WTO.

Not only will this aspect of the EPA offends policy space, but also where permissible any special circumstances which may necessitate derogation must be reported to the Joint CARIFORUM-EC Trade and Development Committee; a point at which a challenge may commence against any special situation been prayed by a regional Member State. In this regard, the National Treatment Provision of the EPA seems to be at odds with the provision of Article 129 (1). The implementation of the Competition

⁴⁸³ Barbara Lee "Hemispheric Development in Competition Policy: Experience and Future Challenges. A paper presented at the EC/AC conference on Hemispheric Development in competition policy. Santiago Chile, May 15-16, 2002. unpublished.

⁴⁸⁴ Only Barbados and Guyana are full members of the Caribbean Court of Justice (CCJ) in its original and appellate Jurisdiction. All CARICOM member States however, a subject of the court in its original Jurisdiction for Interpreting and applying the provisions of the revised Treaty of Chaguaramas-see the Agreement establishing the CCJ. Belize has signalled its intention to join the Court later this year and abolish the Judicial Committee of the Privy Council as its final court of Appeal.

regime of the EPA will face grave challenges and will require far reaching adjustments both nationally and within the CARICOM to give effect to the calibration and harmonization of the competition regime in the region, the imposition of the EPA provisions will be quite problematic.

4.12 Implementing the Public Procurement Provisions

The public procurement chapter of the EPA is one of the most elaborate⁴⁸⁵ the implementation of which will no doubt pose several challenges to the structure of the CARICOM internal mechanism for public procurement. This was one area of the negotiation which highlighted the Europeans great desire to include in the agreement and this was made clear to the CARIFORUM negotiators, who made concession as a trade off⁴⁸⁶. The problems that will be faced in implementing the EPA regime are the extent to which the CARICOM mechanism is consistent with the provision for public procurement under the CSME in the context of the various national regimes. So, while it was the expressed intention of the CARICOM political leadership, that the extent of their commitment should only be limited to transparency in procurement,⁴⁸⁷ the breath and depth of the chapter seems to go further, than the commitments made under WTO, the Treaty of Chaguaramas and at the various national levels. Indeed government procurement is not of WTO's rule based system as the agreement is not compulsory for developed countries and in reality pluralateral in nature; however developing countries for the most part have not signed it⁴⁸⁸.

⁴⁸⁵ Norman Given, "The effect of the Economic Partnership Agreement on the CSME' The Fork in the Road" *Journal of Eastern Caribbean Studies* vol.33. No. (2 June 2008), p. 63.

⁴⁸⁶ Interview- Henry Gill, CRNM. Barbados June 10, 2009.

⁴⁸⁷ Interview- Henry Gill, June 10, 2009. Barbados.

⁴⁸⁸ EU EPAs: Economic and Social Development implications: the case of the CARIFORUM-EC Economic Partnership Agreement. TWN. Third World Network. Feb. 2009. [www.downloaded](#) (April 16, 2009).

Under the CARICOM-Dominican Free Trade Agreement the chapter dealing with government procurement is quite nebulous. Indeed it makes the commitment in principle pending the establishment of the CARICOM's procurement regime; without a specific commitment as to time. It states that "...the parties, consistent with the provisions of Article XI of the Agreement and the plan of action and recognizing the mutual benefit which can result from greater participation by their economic entities... arising from government procurement activities"⁴⁸⁹. The parties agreed that as soon as the CARICOM States adopted a regional regime, then the DR and CARICOM would negotiate a competition regulatory framework.⁴⁹⁰ This in effect is an agreement to negotiate an agreement pending the development of the CARICOM regime. The CARICOM-DR Free Trade Agreement was signed in 1998. However, about eight years later in 2006, CARICOM established its Single Market and Economy (CSME) but still has not yet agreed a regime for government procurement.

In this regard therefore, the EPA would not affect any procurement provision of the CARICOM-DR Free Trade Agreement; neither will it affect the CARICOM regime, as both regimes are in their infancy, and not yet developed. What the EPA has done is to push the CARICOM States and the DR to move their internal processes at a much faster pace. It therefore has created some policy restriction for the states in developing their regime, independent of the influence of the Trade and Development Committee of the EPA. This is arguably, one specific area of the EPA in which the EC has a grand opportunity to influence the development of the regions national procurement regime, because the commitments are binding and immediate in terms of its impact on the National Treatment (NT) provision and to a lesser extent the competition provisions.

⁴⁸⁹ Article VII of the CARICOM-DR Free Trade Agreement.

⁴⁹⁰ Ibid.

4.13. The role of the Regional Preparatory Task Force

The Regional Preparatory Task Force (RPTF) has completed its own studies for the implementation of the procurement provisions of the EPA.. Even though the RPTF was not a formed structure within the ambit of the EPA, but was established to assist the process of the negotiation its work was carried over to the implementation phase. There is therefore no clearly defined pathway in the agreement as to how the work in these commissioned studies would be implemented. So, while Member State of the region will be expected to take legislative action based on the finding of the studies, the mechanism for the channelling of the reports is not clear. However, two possible approaches may be considered. First, these reports may be forward to regional governments to facilitate analysis and start the discussions at the national level to achieve consensus where possible or indeed to narrow the issue as much as possible, after which the recommendation should get to the special COTED for further deliberation and adoption before involving the Authority of the Trade and Development committee. This it would appear is the better approach because it creates an avenue for democratic legitimacy before implementation.

The other approach is to await the inauguration of the Trade and Development Committee and the process of debating could start at that level. However, on reading of the EPA, there is no direct linkage between the EPA structure and governmental structures within the CARICOM Institutions.

All Member States of the CARIFORUM are required to introduce legislation to give effect to the procurement provisions of the EPA in terms similar to what has been agreed, notwithstanding that it is advisable that CARIFORUM State ought to have retain the right to have full autonomy and flexibility over its procurement policy⁴⁹¹.

⁴⁹¹ EU EPAs: Economic and Social Development implications: the case of the CARIFORUM-EC Economic Partnership Agreement. TWN. Third World Network. Feb. 2009. [www.downloaded](#) (April 16, 2009).

At the EPA institutional level, the procurement regime will create several legal difficulties and expose the democratic legitimacy of its decision, because the decision to apply or extend the rules of procurement will be made solely by the CARIFORUM-EC Council. Therefore, while the CARIFORUM Trade and Development committee is empowered to review the provisions of the agreement after three years of coming into being and make recommendation to the Joint Council; so also it can make recommendation on “cooperation in the procurement field”⁴⁹²

There are other legal issues which may arise under the EPA regime. Firstly, the need to make challenges to contract awards or awards procedure in circumstances where a bidder may feel that he was unfairly dealt with and therefore accommodating this problem in any procurement regime is important, not only to address the potential of State corruption, but also to ensure proper compliance. For example in Jamaica, there is the Office of the Contractor General (OCG) established under the Contractor General Act and the Secretariat of the National Contracts Commission (NCC). Which is a separate and independent body with responsibilities primarily to promote “..efficiently in the process of award and implementation of government contracts and ensuring transparency and equity in the awarding of such contracts”⁴⁹³ While, the OCG is also an independent anti- corruption commission which reports directly to Parliament. It has no prosecutorial powers, but through its finding it may refer a matter to the office of the Director of Public Prosecutions (DPP) to review and can recommend criminal prosecution. The Contractor General does not sit on the National Contracts Commission⁴⁹⁴. However; it is the responsibility of the OCG to endorse contracts awarded by the NCC and to investigate any alleged impropriety or breach.

⁴⁹² Article 181. CARIFORUM-EC EPA.

⁴⁹³ Contractor General Act 1999, Jamaica.

⁴⁹⁴ General of Jamaica; who is the Head of state under the constitution of Jamaica order in council (1962) The NCC is a statutory commission composed of a panel of eight (8) members, appointed by the Governor.

The EPA regime appears to run counter to the establishment in Jamaica and Belize, the only two CARICOM Member States with similar anti-corruption regimes⁴⁹⁵. Under the existing regime in Jamaica, the NCC is obliged to provide information to an interested party after a bid process is completed, if so requested. The Access to Information Act, 2002 of Jamaica provides for such request; and decisions of the NCC are subject to judicial review. The EPA provisions seem not to anticipate any challenge because of the broad approach employed in the establishment of the regime. In any event, the local courts and indeed the CCJ are not mentioned anywhere in the EPA as a Dispute Settlement Authority. This seems to be in direct conflict with the provisions and spirit of the CSME even though they are two different regimes operating in the same sphere.

Further, the extent to which National Treatment (NT) is mandated to European business operating in the CARIFORUM Member States either directly or indirectly, the issue of competition in the area of public procurement is inextricably bound. National Treatment is a matter which is subject to the dispute Avoidance Settlement provisions of the EPA exclusively, but it seems that competition and procurement are not, as these give rise to legal and constitutional question which can only be dealt with under regional and National judicial systems. Potential suppliers of goods and services would want to know that they can challenge decision of the competent authority under the EPA because this is a very important measure of ensuring that the process is fair and compliance procedures are followed⁴⁹⁶. It is suggested that so far-reaching is this provision in the

⁴⁹⁵ McKoy, Derick. "Parliamentary oversight of executive procurement: Lessons from the Contractor-General of Jamaica and Belize. Social Science Research Network, working paper series www.papers.ssrn.com/s013/papers.cfm?abstract_id=958098#268573 (April 26, 2010). For a comprehensive discussion of the area of Government Procurement see also McKoy, Derick: 'Measuring the Utility of Institutional Reform in the Public Service' (2009) 58(1) Social and Economic Studies p11-41. Also "Commonwealth Caribbean anticorruption strategies: the new institutional framework" (2009) 34(2) *West Indian Law Journal*, p77-176.

⁴⁹⁶ Stephen Woolcock: "Government Procurement provisions in CARIFORUM EPA and lessons for other ACP States" London school of Economics (LSE). www.2.se.ac.uk/internationalrelations/centresandunits/ITPU/docs/woolcockgovprocurement.doc (March 15, 2010).

context of regional integration processes and development that before the implementation take place, there should be a thorough public discourse, throughout the region so that the public be allowed to impact the establishment of this particular regime.

4.13.1 Implementing Intellectual Property, Innovation and Investment regimes

The existing CARICOM Intellectual Property and Investment regimes lag far behind the commitment the region made in the EPA. However, part of the problem which the region faces in implementing the EPA rests in the inherent dangers in crafting an agreement with provisions which are seemingly lifted from the realities of the European context and sought to be super-imposed onto another without due regard to practical implications⁴⁹⁷. For, because the region is replete with capital importing economies, the Investment landscape and existing regulatory framework is compounded with various incentive legislation⁴⁹⁸, all of which are skewed in favour of attracting Foreign Direct Investment (FDI). Some of these incentive laws have existed since the 1950s and even more so, after these Small Island Developing States (SIDS) of the region became politically Independent as a matter of deliberate policy⁴⁹⁹ in the 1960s and 70s. The existing regimes at the national level, bilateral and intra-regional levels are all discriminatory in character as they sought to give preference to foreign investors over local industries in

⁴⁹⁷ Francoise L.M. Hendy "Investment Harmonization: The State of Play and its potential impacts" www.ccmfuwi.org/files/publications/conference/911.pdf (April 13, 2010).

⁴⁹⁸ Examples of these are spread across the Region. In Jamaica list of Incentive Laws are as follows: Export Industry encouragement Act, Jamaica Export Free Zone Act, moratorium on Duties, Exchange control Act, Bauxite and Alumina Industries Encouragement Act, Hotel Incentives Act, Factory construction Law, and the International Financial companies Act, Resort cottage Incentives Act, motion pictures encouragement Act. CARICOM-Venezuela (1993), CARICOM-Colombia (1994), CARICOM-DR (1998), CARICOM-Cuba (2000) and CARICOM-Costa Rica (2004).

⁴⁹⁹ The Caribbean Territories adopted what came to be called the "Puerto Rican model" "of development based on The Lewis model of "Industrialization by invitation" which was the Industrialization strategy promoted by the Caribbean since the late 1940s. The core of the model is the development of Industries though the attraction of FDI and it should be export oriented. All the CARICOM States have investment incentives legislations as they compete in the same markets for investments.

many areas. The introduction of the Single Market and Economy has the potential to remedy this situation. However, the Investment regime cannot therefore develop without incorporating, market access, liberalization, the Most Favoured Nation (MFN) and the National Treatment (NT) provisions which are inextricable tied to the regime for Intellectual Property, Innovation and Competition.

The implementation of the EPA Investment regime cannot be done oblivious of the existing bilateral treaties between CARICOM and other regions and territories. It is in the context of the National Investment regime that CARICOM through the Treaty of Chaguaramas was attempting to establish a Harmonized approach to investment, without offending the various national regimes. The effect of the amendment to the 1973 CARICOM Tax Treaty is instructive, as the region prepared for the introduction of the CSME on January 1, 2006. Because, there were crucial rates of withholding taxes in reach of the territories of the region, companies operating in Barbados, Jamaica and Trinidad and Tobago shifted their ownership structure and investment capital base of the pending Amendment. But while the region tries to settle its own Investment regime, the EPA has superimposed a different structure, which implies binding commitments beyond the CARICOM Internal regime and by application of the National Treatment Clause, most of the regimes in CARICOM State will have to be adjusted. In this regard even the proposed CARICOM Investment regime may well have to be re-visited, before it is implemented. Indeed, the EPA regime appears to supersede the CARICOM regime.

The aim of the investment regime is to promote cross-border investment within the region, and includes the mechanisms under the CARICOM Single Market and Economy (CSME), the CARICOM Double Taxation Treaty all of which fall within the jurisdiction of the Caribbean Court of Justice. The Bahamas is not a signatory to the CSME and so it is with the Dominican Republic, However, the Double Taxation Agreement replaced the

1973 Tax Treaty which covered the MDC's and LDC's⁵⁰⁰ in the region of which the Bahamas is a signatory State under the Revised Treaty of Chaguaramas.

There are three aspects to the proposed CARICOM Investment regime; all of the States in CARIFORUM group except the Bahamas are Member of the WTO and have all adhered to the minimum obligations for FDI under the WTO regime. The EPA however is GATs plus; the implementation of which can have deleterious effect on the Investment and financial regimes of these small open and fragile economies of the CARIFORUM region. Notwithstanding that the Investment regime in CARICOM embraced a three- prong approach. There is the CARICOM Investment policy, the Investment Code and the Investment Incentives. The Investment policy and code have being developed and are currently undergoing review at the national level. All aspects of the regime will be affected by the EPA provisions as it appears that these are not able to co-exist in several material respects, because the EPA obligations will now be driving the development of the regime and not the provision of the Revised Treaty of Chaguaramas or the Double Taxation Agreement.

The EPA gives authority of the Joint CARIFORUM-EC Council to deal with major issues, conflict or any other bilateral, multilateral or international development that might affect the implementation and functional operation of the EPA. It is arguable therefore, that the EPA has in significant ways offended the provisions of the Treaty of Chaguaramas, the various regional and bilateral trade and investment agreements and taxation agreements because the decision of the Joint Council is binding on the parties and the signatory state of the CARIFORUM Group.

The dispute which might arise under the EPA may be cross-cutting within the provisions of the Treaty of Chaguaramas and more particularly within the context of the Caribbean Single Market and Economy (CSME). The language of the EPA with respect

⁵⁰⁰ The MDCs are: Barbados, Guyana, Jamaica and Trinidad & Tobago and the LDCs are: Antigua, Belize, Dominica, Grenada, Montserrat, St. Lucia, St. Vincent and St. Kitts, Nevis and Anguilla.

to the power of the Joint Council may in practical terms and in law expose grave conflict with the Treaty of Chaguaramas. In this regard, the question which the region should examine during the development of the rules of procedure is to identify how these issues which may have cross-cutting application on the Treaty of Chaguaramas should be resolved.

The Caribbean court of Justice (CCJ) in its original Jurisdiction is the regional trade court established to interpret and apply the Treaty of Chaguaramas. However, as previously argued, the jurisdiction of the court is ousted by the EPA and the decisions of the Joint Council is binding and seemingly final. Further, the dispute settlement provision clearly defined the link between Dispute Settlement Mechanism and the Authority of the Joint Council. The Dispute Settlement procedure established under the EPA mirrors that which exists at the WTO for the most part, however, these cannot run concurrently in matters of disputes resolution arising under the EPA.

4.13.2 Restriction of policy space

The CARIFORUM States are all capital importing economies and therefore they all compete in the same market for Foreign Direct Investment (FDI) and have retained for themselves the right to develop their own Foreign Investment Incentives regimes and also to protect local Industries and allow them to grow. This approach to industrialisation of the region is caught under the National Preference rules of the Free Trade Agreement. The region's investment regimes and national competitive regimes have been operating under the Lomé, Cotonou and WTO arrangements which had allowed them their own policy space to develop regimes best suited for their stage of economic development. Therefore, it has become the accepted norm within CARICOM to create or grant monopoly status to investors as an incentive for making their investments. There are also instances where the private sector is slow to invest in a particular area of the national economy and the government has to take such responsibilities i.e. water supply schemes, port and airport facilities and public transportation, and in some private sectors area where businesses have failed and governments have has to rescue the

sector and take over those entities. For example, the financial sector collapse which occurred in Jamaica in 1992-1993. Interventions in the Hotel and Mining sector along with government holding in national airlines, where these conditions exist. It is argued that the EPA competition regime is designed to dismantle that approach to investment and where they do not already exist; the policy space to create them is restricted.

4.14 Conclusions

The implementation of the CARIFORUM-EC Economic Partnership Agreement is a work in progress which is scheduled to be completed in 2033. The process when completed will have a far reaching and fundamental impact on how the CARIFORUM States interact in the global political economy and also within their own domestic and regional markets.

The costs of adjusting these economies and regional institutions will necessitate the mustering of the political will to first make the necessary legislative and policy changes, some of which run counter to the economic and business practices which are deeply embedded. The region will require financial and technical assistance to implement the provisions of the EPA, but it remains very tentative as the European's commitments to assist is very slow in coming and in some instances may not be honoured as global economic and financial constraints take toll in many European economies.

The raft of adjustments which are required cannot all be undertaken at the same time, but the region must take steps to honour their obligations under the Agreement even where it involves financial commitments for which they are unable to meet from their own revenue base, because the Europeans have skilfully evaded making firm commitments for financing the EPA. This is so because it is arguable, that the commitments they have made are more in the realm of declarations of intent which are not legally binding, than clearly defined and assured funding.

The real challenge for the CARIFORUM States in implementing the EPA cannot be fully assessed in the short term, but the various approaches to the implementation processes in and of themselves are very problematic. This is so because, in many instances the region made commitments and the cost of implementing those commitments are only being assessed by the Regional Task Force after the completion of the Agreements. To date, the task force has completed less than fifty percent of the twenty studies which it had undertaken since the completion of the agreements. So, as the Task Force completes each study, it is then and only then that the true costs of implementing these arrangements can be fully appreciated. However, in some instances, the Europeans may not assist to the extent that the CARIFORUM States may harbour legitimate expectations in circumstances where the EPA implementation road map was held up for well over a year since the signing of the agreement as the EC seemingly “drags its feet” and the CARIFORUM States await their final positions.

None of the Institutions established under the EPA is yet operational and therefore the region has been hampered in taking certain decisions which will impact the operation of those institutional bodies. Therefore the basic approach to the implementation of the CARIFORUM-EC Economic Partnership Agreement seems to be externally driven and so expose the extent to which the existing CARICOM institution, programs and mechanism may well have to be revamped, a situation which was never envisaged by the Cotonou Partnership Agreement between the ACP States and the EC. That agreement was intended to guide the negotiating process to foster the reduction of poverty, build regional integration and integrate the ACP States into the global economy.

CHAPTER FIVE

Ethics in Negotiating the CARIFORUM-EU Economic Partnership Agreement (EPA)

5.1 Introduction

The issue of ethical considerations in the negotiations for the CARIFORUM-EC Economic Partnership Agreement is very relevant in the context of the wider trade policies and strategies of the negotiating parties, the asymmetrical power dynamics in the relationship and the global political economy. The EC is the more powerful of the two groups of States which have shared a long history of association. However, in the negotiating processes each side was duty bound to protect its vital interests because to do otherwise would be unethical. But within that exercise, the parties must also endeavour to avoid the temptation to act dishonestly and therefore build trust.⁵⁰¹

The concept of ethics is important in all negotiations, because even where there are conflicts of war, parties at the negotiating table are expected to build trust and it is argued that trust cannot be build on dishonesty, indeed dishonesty destroys trust.

The art of negotiations therefore rest heavily on the negotiator's honesty and belief that in the context of trying to achieve the best outcome for the party being represented, there is a duty to act fairly and justly in order to build trust and to foster a long term relationship.

The question of morality though relevant in the context of fairness, seems not to have "pride of place" in the rigours of international trade negotiations and therefore may be discounted for the purposes of this analysis. However, the moral issue which arise may

⁵⁰¹ Crompton, Peter.C and Dees, J. Gregory: Promoting Honesty in Negotiations: An Exercise in Practical Ethics; <http://www.cramton.umd.edu/papers1990-1994/93beq-promoting-honesty-in-negotiation.pd>.
Down loaded March, 12, 2010.

touches and concerns the overarching question of honesty and deception and so, in that regard the two seem inextricably bound

The question of the ethics of the EPA negotiations will be analysed in the context of deception and honesty at the bargaining table and throughout the entire processes since the all ACP-EU launch in 2002.

The CARIFORUM States are the only regional configuration of the ACP Group of States that signed a comprehensive Economic Partnership Agreement with the European Union by the 31st December 2007. The other configurations have signed goods only agreement⁵⁰². To begin with, the fragmentation of the ACP Countries into regional configuration was at the insistence of the EU to satisfy its policy objectives to which the ACP had acquiesced. This policy position instituted by the EU signalled the formalization of the fragmentation of the ACP group of States as a functional group in the multilateral trading regime. The Cotonou Agreement signed in June 2000, in Benin,

⁵⁰² West Africa: 15 members of ECOWAS: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo, Mauritania; Central Africa (CEMAC) 8 Countries: Cameroon, Central African Republic (CAR), Chad, Congo, Democratic Republic of Congo (DRC), Equatorial Guinea, Gabon, Sao Tome and Principe; Eastern & Southern Africa (COMESA) 11 Countries: Djibouti, Eritrea, Ethiopia and Sudan (Horn of Africa) Malawi, Zambia and Zimbabwe (southern Africa) Comoros, Mauritius, Madagascar and Seychelles (Indian Ocean islands); Eastern African Community (EAC) Countries: Kenya, Uganda, Tanzania, Burundi, Rwanda; Southern African Development Community (SADC) Countries: Angola, Botswana, Lesotho, Mozambique, Namibia, Swaziland and South Africa are negotiating their EPAs through the SADC EPA Group. The other six members of the broader SADC region – Democratic Republic of the Congo, Madagascar, Malawi, Mauritius, Zambia and Zimbabwe – are negotiating EPAs within other regional groups. Caribbean (CARIFORUM) 15 countries: All members of CARICOM – Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Suriname, Trinidad and Tobago, except Dominican Republic & the Pacific (PACIFICFORUM) 14 island states: Cook Islands, Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu.

is the successor agreement to the Lomé convention and it represented the last agreement which the EC party would have negotiated with the ACP states as a single unit and to have officially brought an end to the only non-reciprocal preferential trade and co-operation agreement in the multilateral trading system.

Europe was never comfortable negotiating with the ACP as a group because it was seen as too large and unwieldy⁵⁰³, but for the Caribbean States the shelter offered by the group was very important to its strategy in confronting the Europeans. The opportunity to break up the coalition of the ACP States came after the fall of the Soviet System in 1989 when Europe began the process of reorganising itself and redefining its role in the wider global context. The lack of economic growth, the existence of stagnation in their economies and increased levels of poverty in several ACP States were recognised in the process of Europe's re-defining its role in the global political economy. But, without any serious in- depth investigation, consultation or analysis of the causes of those conditions, the European Commissioned Green Paper⁵⁰⁴

⁵⁰³ Interview- PJ Patterson Kingston, Jamaica March 3, 2009, Sir Shirdath Ramphal, June 8, 2009, Bridgetown, Barbados.

⁵⁰⁴ The EU Commissioned Green Paper was published in 1997. The purpose of the Green Paper was to examine the achievement of the various Development Cooperation Agreements between the ACP-EU and highlight the challenges in order to chart the way for the future of the relationship. Therefore, in the forward to the Green Paper, Professor Pinheiro, a member of the EU Commission summed up the position of the EU when he observed: "In view of the major changes that have taken place over the last 20 years, the time has come to take a fresh look at the future of the ACP-EU relation. The world is now a different place. New challenges have arisen and both we and our partners have now preoccupations" In a world now multi-polar the European Union must make its presence felt. He further posited the view that the union "is striving to forge its external identity through a more effective and a more global common foreign policy and security policy, and a multilateral trade policy designed to open up markets in accordance with negotiated common rules" This is a clear and unequivocal pronouncement of the direction of the EU, one which lay, no claim to preferential treatment for ACP and in which the ACP Group has no special status. The Green Paper highlights that the principle upon which the commercial preferences were given to the ACP states; stability, contractility and non-reciprocity, their advantages have all been eroded over the years as under the general system preferences (GSP) other non-ACP supporters were accorded similar preferences. The Paper also highlighted the failure of ACP countries to increase their share of the EU market through export and further lament the fact that they have failed to maintain their market share or diversify and expand their economies. In a comprehensive review of the relationship between the ACP and EU the paper emphasized the poor results of the ACP aid support over the years. It finds that aid is a major plank of the ACP –EU relations and aid has out flanked trade, but highlights a number of problems with the administration of aid and concludes that in the area of aid administration there has been "too little partnership and too much aid dependence". In admitting

recommended changes to the structure of the relationship between the EC and the ACP States. So, by the time the mid-term review of the fourth Lomé came up, Europe was in a very commanding position to institute its policy initiative taken without the benefit of input or formal consultation with its long standing ACP partners in circumstances where it could not effectively mount any resistance, even though some Member States warned of the consequences of breaking up the group to facilitate Regional Trade Agreements⁵⁰⁵. However, some Member States of the ACP group felt that they would be better off if they negotiated in regional groups⁵⁰⁶.

The Caribbean by then was not in a position to assert any great influence over the ACP group as was the case in the earlier years of negotiating the Lomé one. The European initiative was well crafted and passed off on the ACP with such diplomatic ease that seemed to have touched a deep sense of benevolence which rendered null, any real potential for resistance. So effective was the European initiative that the ACP agreed to make changes to the Georgetown Agreement⁵⁰⁷ which was the foundation and effective substratum of their very existence, in order to meet the requirement of a European driven fragmentation of the ACP Group of States. Some argue that ACP by then had lost its cohesiveness as a group, their sense of unity and solidarity was fractured due to the lack of political will and the deterioration in the quality of its diplomatic machinery⁵⁰⁸.

that which there have been some bright spots in the area of aid for infrastructural development, the 1980s have revealed efficiency rates of 70% for transport but as low as 30% in areas of agriculture and rural development. It also finds that the unique STABEX and SYSMIN aid was not suited for the present context. The reports which covered the state of affairs since the commencement of the formal trading and development cooperation up to 1997 found that the standard of living in the ACP countries had improved but the overall situation remained grim as 41 of the 50 poorest countries in the developing world are ACP countries.

⁵⁰⁵ PJ Patterson of Jamaica warned of the danger of the EU's proposals. Speech by Honourable P.J. Patterson, Q.C. M.P, Prime Minister of Jamaica to the 17th ACP/EEC Joint Council Meeting, Jamaica Conference Center, Kingston, Jamaica. May 21, 1992.

⁵⁰⁶ Speech by Clement J. Rohee, Foreign Minister of Guyana, Barbados, February 14, 2009. Some Francophone African States wanted to negotiate separately.

⁵⁰⁷ Interview- KD Knight, Kingston, Jamaica, Nov. 14, 2008.

⁵⁰⁸ Interview- Shirdath Ramphal "Sadness of a Statesman" Trinidad & Tobago Review, Nov.18, 2008.

and political leadership and representation which affected its standing in the “eyes” of the European and not the conduct or policies of the Europeans which accounted for the fragmentation. Therefore, the Cotonou Agreement was a manifestation of what had already existed within the ACP group, and not the cause of it⁵⁰⁹ as Europe knew what it wanted and fostered plants and policies best suited for its global agenda, and so, it was therefore left to its ACP partners to design their own plans and policies to promote and give effect to their development objectives.

The Lomé Conventions from their very inception did not fit comfortably in the Global trading system as it discriminated against other developing countries which were not party to it. This was due to its one-way preferential and non-reciprocal trade arrangements between Europe and its former colonies. Lomé I, II, III and IV were allowed to exist in the Global Trading system even though it violated the MFN clause XXIV of GATT. But, it was never challenged as there was no consensus to enforce its removal. However, the Uruguay Round which concluded in 1994 saw the establishment of the WTO and with it came the Dispute Settlement Body (DSB), which is the enforcement arm of the trade regime. This provided the opening for the successful challenges to the ACP-EU trade regime when the EU started to institute its internal market reforms in 1992. The ethics of the negotiations for the EPA must be viewed in the context of the relations between the parties and the shifts in the EU’s global agenda and changed socio-political and economic landscape driven by three main events, the first being the collapse of the soviet system and the need for reforms. Secondly, the advent of the WTO and its Dispute Settlement Body and thirdly, the emergence of Brazil, China and India as significant players in the global political economy.

In these regards, the first legal challenge to the Lomé system came in 1993 from the Latin America “dollar” banana producers who questioned the EU banana regime and succeeded in having it declared incompatible and discriminatory, but the decision could not be enforced by the Special Group (SG) which heard the dispute. But, so soon as the

⁵⁰⁹ Interview– Sam Chandler, Barbados, June10, 2009.

WTO (DSB) was established in 1995, the matter was referred to it for its decision. Europe which was a signatory to the agreement had to adhere to the ruling, and this ruling sounded the “death knell” for the Lomé arrangements. So, by 1997, the EU published its Green Paper which outlined its new approach to the ACP trade and development and therefore. So by the time the mid-term review of Lomé IV was completed, it became clear that Lomé would to be replaced by a new trade and Development arrangement between the ACP and Europe and that the ACP’s cohesiveness and solidarity were deeply fractured⁵¹⁰. By 2000, Lomé IV had expired and was replaced by Cotonou Agreement which outlined the new arrangements but kept the preferential one-way non reciprocal trade arrangement between the ACP and the EU which created great difficulties in getting the agreement accepted at the WTO. Indeed, it was not until the Ministerial in Doha in 2001 that the waiver for the implementation was granted. However, the EU paid a huge price to secure that waiver because, during the negotiation for the Cotonou Agreement to be accepted at the WTO, the EU had to make significant concessions in order to secure the waiver. Both the EU and ACP States were given until the 31st December 2007 to have a WTO compatible agreement in place and the EU vowed never to seek another waiver.

Negotiation for the new Economic Partnership Agreement between Europe and the ACP were launch at the all ACP level on the 27th of September 2002, in Brussels and it lasted for one year. The second phase of the negotiations at the regional level was launched in 2003, beginning with the Central and Southern African configuration (COMESA) followed by the CARIFORUM Group on April 16, 2004. The CARIFORUM Agreement was signed on the 15th of October 2008 also in Barbados. During the negotiations the relationship appeared strained and the process was threatened, due to the Machiavellian approach and mercantilist posture of the EC negotiators⁵¹¹.

⁵¹⁰ Interview- Dr. Anthony Gonzalves Port of Spain Trinidad & Tobago, June 15, 2009.

⁵¹¹ Speech by Dame Billie Miller to ACP-EU Joint Parliamentary Assembly, Vienna Austria, June 20, 2006.

This chapter analyses the contours of the negotiation and the ethical issues which surfaced and played a role in the outcome of the negotiations. It also explores whether the CARIFORUM EPA gives expression to the normative principles of equality, fairness and solidarity in the context of ethical standards of the Europeans system on the one hand, and the CARIFORUM approach on the other hand while emphasizing the region's self interest in light of ACP's cohesiveness and solidarity. Further, it examines the ethics and legitimacy of CARIFORUM's negotiating processes in the context of involvement of the various stake holders to include; academics, Labour unions, professional and business associations and also the NGOs in the region. Some of the ethical questions that had arisen have their origins in the external trade policies formulated by DG Trade which were driven by internal protectionist tendencies and also the domestic economic interests and political machinations of its various Member States⁵¹², and also, within the CARIFORUM mechanisms and institutions of governance. The critical ethical issues surrounding economic rights, fairness, solidarity and trust in the spirit of the long standing co-operation between the two sides. The treatment of banana and sugar raised some questions concerning economic rights and human rights in the context of Europe's desire to protect its economic interest and facilitating its global trade agenda. The chapter also addresses the negotiation processes from the all ACP level, but focuses particularly on the events in the CARIFORUM-EC negotiations up to the formal signing of the EPA.

5.2 Crafting the EC's Mandate: Interpretation and application

The deliberations for the EC mandate commenced in the EU with the draft recommendation prepared by Director-General for trade (DG).The document was couched in very vague language but followed closely to the objectives established in the Cotonou Agreement in terms of development concerns and WTO compatibility. The draft document was approved by the EC's 133 Committee and designed to promote

⁵¹² Elgstrom, Ole and Pilegaard, Jess "Imposed coherence: negotiating economic partnership Agreement: European integration Vol. 30. No 3. (July 2008). p. 372

Global Europe and its policies toward the developing world as being open, liberal and friendly.⁵¹³ However, the draft document was so crafted to ensure safe passage through the political directorate of the EU's system as it sought to satisfy the concerns of various Member States which were either (1) not sympathetic towards the ACP States and their demands for development support, (2) Countries such as Spain and Portugal which wanted to protect their interests in tropical agricultural products and therefore had concerns about tropical products from ACP suppliers entering Europe, (3) France and the UK which had strong historical ties to the ACP States, (4) Germany which had a tradition of free marketing philosophy and (5) the Nordic States which had no real interest in ACP exports but had been traditional aid donors to the ACP⁵¹⁴.

The final mandate issued in 2002⁵¹⁵ was therefore an amalgam of political and economic interests of the various Member States in the context of their national interests. Having secured the mandate, the Director-General (DG) for trade had the duty to give expressions to the global trade policies of the EU and so, took final charge of the negotiations and formulated an approach which seemed to have relegated the development aspect of the negotiation by pushing the trade agenda in all its discourse⁵¹⁶. For the next four years, the Commission gave its own interpretation to the mandate and to the meaning of development. It took the view that trade is the means to development and the Commission's role was to negotiate trade and not development. They further took the view that technical and financial support for EPA was already provided for under Cotonou and the 9th EDF. This interpretation and application had frustrated the ACP States at almost every juncture of the negotiations until the CARIFORUM States decided to take action through the initiatives of Dame Billie Miller in Vienna, Austria in 2006. The Director-General for Development, Louis Michel who

⁵¹³ Ibid.

⁵¹⁴ Ibid p. 372.

⁵¹⁵ Commission of the European Communities, Brussels 9.4.2002 SEC (2002) 351 Final.

⁵¹⁶ Ibid.

assumed office after Mr. Pascal Lamy left played a very low-keyed role in the negotiation at a later stage. The early signs of the DG Trade's intention to treat the negotiation as a process to open up regional markets and push European mercantilism surfaced during the all ACP level when the Europeans refused to agree on a binding legal framework at the all ACP level.

The ACP having developed its mandate prior was left out on a limb during the negotiation at the all ACP Level as Europe refused every demand to negotiate a framework agreement to take the process into the regional phase. While the EU Member States at this stage, having issued their mandate, stepped back and allowed the Commissioner for Trade to conduct the negotiations⁵¹⁷. The DG Trade therefore had the autonomy to develop policies in circumstances where the EC party did not resolve some of the issues which the ACP raised. However, the ACP States were slow to call upon the Article 133 Committee Members which could give guidance in some areas, because even though the Commission was negotiating the EPA, the 133 Committee was responsible for overseeing the negotiations, which suggests that the Member State had not surrendered their right of control⁵¹⁸. But, as time was running out for the close of the first phase the Commissioner for trade Mr. Pascal Lamy, realizing the frustration of the ACP Membership and the lack of progress in the negotiations, made an open offer early in 2003 indicating that the EC would be willing to start negotiation with any region which felt it was ready, even before phase one all ACP was completed⁵¹⁹.

That offer, arguably facilitated the further opening-up of the divisions in ACP cohesiveness and solidarity as the Francophone African States which traditionally were perceived as the weak link in the Group, felt that they would have benefited more if they

⁵¹⁷ Elgstrom, Ole and Pilegaard. Op.cit.

⁵¹⁸ Leal-Arcas, Rafael; The EU Institutions and Their *Modus Operandi* In The World Trading System, *The Columbia Journal Of European Law*, Vol.12.No.1,(2005/2006) p. 135.

⁵¹⁹ Offer was made at the 4th ACP-EU Joint Ministerial Trade Committee (JMTC) held in ST. Lucia on the 1st of March 2003. See also CRNM Update no.0303, March 18, 2003.

went early⁵²⁰ and therefore took the offer. This, it is argued undermined the efforts of the ACP to hold together and the negotiations therefore fell apart and for all intent and purposes the all ACP phase came to a premature end.

At the close of the negotiations, the ACP could only manage a Joint Declaration which outlined the areas in which the ACP and EC had agreed. These were merely on the broad framework, objectives and time schedule for the negotiation for the regional phase. So each region was now left to face the EC on their own. But was and hoping for some collaboration during the regional phase of the negotiations. The EC succeeded in imposing its policies and position on the ACP partners in a fundamental way when they refused to set up a Joint-ACP-EU steering committee on WTO negotiation in light of the linkages between the Doha Negotiations and the EPA, both of which were ostensibly development oriented⁵²¹.

5.2.1 The EU's strategy

Having achieved the waiver at Doha in 2001, to allow the non-reciprocal arrangement to run for a further period up to 31st of December 2007, the EU's strategy was to push the ACP to establish a Customs Union as a means of preserving the non-reciprocal arrangement as envisaged under Cotonou, but was hoping that the ACP would have approved. However, both sides could not agree on the interpretation of WTO compatibility. The ACP refused to negotiate the so called "Singapore Issue" of Investment, Competition, Government Procurement and Trade Facilitation. In this regard, the Cancun Ministerial in 2001, brought to full light the developing countries displeasure with the "Singapore Issues" and the extent to which the developed countries were treating the legitimate concerns of the developing countries. The Cancun

⁵²⁰ Interview- Ambassador Henry Gill, June 10, 2009 Bridgetown, Barbados. NB. The Central African Common Market (CEMAC) was the first group to accepted Lamy's offer.

⁵²¹ Byron, Jessica & Lewis, Patsy: Formulating Sustainable Development Benchmarks for an EU-CARIFORUM EPA Caribbean Perspective, University of the West Indies, Mona, Jamaica (June 2007) p 68.<http://www.normangirvan.info/wp-content/uploads/2007/11/development-benchmarking-the-epa-byron-lewis.pdf> (January 10, 20009).

experience took place during the 1st phase of the all ACP-EU negotiations and so it sent a signal to the EU that developing countries were resolute on those issues.

For the ACP Group, they were very concern about the extent of reciprocity, the Special and Differential Treatment application under Article XXIV of GATT, under which they had to achieve WTO compatibility. The divergences were great in this regard and Europe was not prepared to give in to the demands of the ACP⁵²².

However, the EU developed a strategy to guide its approach to the EPA so well crafted to force the ACP to adopt the EU's model of integration notwithstanding the dictates of the Cotonou Agreement which states that each region must be allow to decide the form of integration which best suits its situation. Europe's intention was to export its trade policies through the creation of Regional Trade Agreements (RTA's)⁵²³. These trade policies were therefore strategically placed in the EPA mandate to make Global Europe the center -piece of the negotiations between Europe and its former colonies as a good starting point to push the Global Europe initiative. So, the inclusion of the "Singapore issue" in the RTA's was intended to influence the outcome of these issues at the multilateral regime⁵²⁴.

So by the close of the all ACP phase, Pascal Lamy was well aware of the ACPs position on the Singapore issues and that even though the EU was expecting cooperation at the multilateral level from the ACP States, these States were not prepared to give their support because the EC was not prepared to agree to their proposals at the all ACP level. The EU seemingly had missed an opportunity to temper the ACP coalition at the

⁵²² Ochieng, Cosmos, and Obute Milton "The EU-ACP Economic Partnership Agreement and the Development Question: Constraint and opportunities posted by Article XXIV and special and differential treatment provisions of the WTO." *Journal of International Economic Law* Vol.10. No. 2.364.

⁵²³ Meur, Jean-Christopher "Exporting Europe's Trade Policy" 28 *world Economy* (2005) p. 1565.

⁵²⁴ Thomas, Clive: CARICOM Perspective on the CARIFORUM-EC Economic Partnership Agreement. Institute of Development Studies, University of Guyana, (May 2008) p.26. <http://www.normangirvan.info/wp-content/uploads/2008/05/clive-thomas-caricom-perspective-on-the-cf-ec-epa-may-2008.pdf> (December 20, 2008).

multilateral level when it refused the ACP's offer of a Joint ACP-EU steering committee on WTO negotiations. This refusal raised the question of the EC commitments and *bona fide* regarding the quality of the ACP-EU partnership and the need for co-operation at the multilateral level. But having refused the offer, the EC proceeded to include and pressed the ACP States to negotiate the "Singapore Issues". A powerful view taken on the EU's conduct is that their approach exposed the "moral duplicity dishonesty and contradictions inherent in the EU's" conduct towards its ACP partners⁵²⁵.

Therefore, the parties went into the launch of the regional negotiations with wide divergence on issues pertinent to the ACP-development with the feeling among ACP States that the EU was being disingenuous. They felt also that the EC was only concerned with its self interests and was prepared to use its ACP partners to achieve its Global objectives without any concomitant commitments or indeed mutual recognition. Europe by adopting this policy and strategy had shown very little regard for the economic rights of the ACP States and also to the rights of their citizens to a livelihood. Even more so, in light of Europe's unilateral denunciation of the Sugar Protocol, the dismantling of the banana and rice regime, the combination of which had caused immeasurable economic and social dislocation in the Caribbean Small Island States. The European attitude further pressured the Caribbean in grappling with these issues, while negotiating a new trade arrangement within a set timeframe in circumstances where Europe was threatening to impose higher trade tariffs were the CARIFORUM States failed to complete within time.

The CARIFORUM States therefore were caught in a bind, because having committed to complete a comprehensive EPA, they found it extremely difficult to walk away from the negotiations fearing the imposition of higher tariffs and the consequential trade disruptions coupled with the potential loss of credibility had elected to stay the course to completion. Indeed the mandate of the region which had been continuously reiterated

⁵²⁵ Ibid.

by regional leaders was to complete on time because the CARIFORUM would be worst off without an EPA on the 1ST of January 2008 and the region would put itself at a disadvantage if the agreement was completed later⁵²⁶.

5.3 Launch of the EPA negotiation: All-ACP Phase.

In order to illuminate the extent of the ethical issues involved, it is important firstly, to expose the history of the relationship in the context of the global trading system and the colonial connections.

When GATT was established, in 1947, none of the ACP states were original signatories and therefore the arrangements put in place then was to deal with trade among the Industrial North primarily, the rules made very little reference to the colonies of Europe.

By the time the Uruguay Round started many of the ACP State had become Members of the GATT; but their participation in the negotiations was very limited, indeed even the CARICOM States which had some appreciation of the direction in which the global trade regime was heading did not coordinate its efforts as a group during those negotiations⁵²⁷.

When the Lomé Convention was signed in 1975, it came about because of the demand of the developing world which had threatened the supply chain of raw material needed by the Industrial North both in terms of agricultural commodities and energy sources⁵²⁸. Europe was particularly vulnerable as they depended heavily on the former colonies for raw materials and in particular. Britain which needed sugar from the ACP states to keep its refineries going was particularly worried. Indeed, so badly was their need for

⁵²⁶ Bernal, Richard: Globalization: Everything But Alms: The EPA and Economic Development Grace Kennedy Lecture Series 2008, GraceKennedy Foundation, Kingston, (April, 2008) p 20. www.grace-lecture-2008-dg.pdf (December 12, 2008).

⁵²⁷ Interview- Dr. Anthony Gonzalves Port of Spain, Trinidad & Tobago, June 15, 2009.

⁵²⁸ Interview-PJ Patterson, March 3, 2009. Kingston, Jamaica & Interview-Sir Shirdath Ramphal, June 9, 2009. Bridgetown, Barbados.

assurance of continued supply of raw sugar that the then UK Trade Minister, Mr. Geoffrey Rippon literally begged the Caribbean to guarantee supplies during the first Lomé negotiations⁵²⁹. Those concerns laid the foundation for the Sugar Protocol being of a separate legal regime without an expiration date and was therefore mutually exclusive of the Lomé Convention as the Protocol for the purposes of meeting the needs of the UK had in effect replaced the Commonwealth Sugar Agreement which the UK had with its Commonwealth suppliers generally. So it was also for bananas because, most of the Caribbean bananas entered Europe through the UK, while French Suppliers of both commodities were primarily from their former colonies and OCTs, Germany on the other hand was supplied from Central America among other non ACP States.

The integrity of the Lomé Agreement was seriously affected during the negotiations of the Uruguay Round, the ACP had placed some reliance on the Europeans to protect the integrity of the Lomé Agreement, but that reliance failed to mature for the ACP States⁵³⁰ in the context of the dynamics of those negotiations. The ACP's tacit reliance on the EU seemed either misplaced or at best was misunderstood, because in those negotiations the EC Party was duty bound to first secure its vital economic interests⁵³¹. Therefore, the ACP States by placing such reliance on the EU had failed to protect their own self interests, because Europe had very limited options but to protect its vital interests. The facts remained that, those negotiations were by and large conducted among countries of the Industrialized North while the developing countries were indeed on the periphery⁵³². By the time the Uruguay Round was completed Europe was reorganizing its internal market and also the Common Agricultural Policies (CAP) was being

⁵²⁹ Interview- PJ Patterson, March 3, 2009.

⁵³⁰ Interview- P.J Patterson, & Sam Chandler, June 10, 2009. Barbados.

⁵³¹ Interviews- Americo Beviglia Zampetti (DG Trade) Belgium, May.2009, John Caloghirou DG DEV.) Belgium, May4, 2009, Elsa Fenet EU office in Barbados, June...2007, EU office in Jamaica. PJ Patterson, March3,2009, Sir Alister McIntyre, Nov.14,2008, Carl Grededge, Bridgetown Barbados, June....2009 and Sam Chandler, Barbados, June...2009.

⁵³² Ibid.

reformed. In those processes, the ACP States, being junior partners were never consulted, nor their interests taken fully on board by the EU even though the ACP States had called for consultations. Caribbean sugar and banana were severely affected by those adjustments. Therefore when the launch of the 1st phase- all ACP-EU negotiations took place, the ACP States were in serious problems of economic dislocation. These factors were well known to the Europeans and it was in this context that both sides had to complete their mandate for the EPA negotiations.

While the ACP States were very proactive in preparing and agreed their mandate well in advance of the start of the negotiations the EU however, delayed presenting its mandate until close to the date of the launch which put pressure on the ACP State to properly prepare their counter positions with limited time to negotiate. This seemed to have been a deliberate strategy as the course of the negotiations revealed that the EU was “playing for time” because they had no genuine intentions to negotiate with the ACP as a group, but rather to deal with each configuration of Member States. But, the ACP States would have been naïve to have believed that the EU would have completed a framework agreement at the all ACP level and leave the regional specific issues for the negotiations at the regional phase. Because, were they to accede to this approach it would have undermined the real reason for dismantling the ACP coalition and shaped the new configuration in the first place. It was during the preparatory stages for the mandate that the EU’s incoherent policy making had exposed aspects of the ethical issue which were to follow the negotiations throughout in some material respects⁵³³. Because, when the launch of the all ACP phase of the negotiations took place, the WTO arrangements were already in place and the EU had experienced the reaction of the developing countries at the Seattle (1999) and Cancun (2001) WTO Ministerial meetings, both of which failed, because the developing countries banded together to resist the Developed North on the so called “Singapore issues” and in several other areas.

⁵³³ Elgstrom, Ole and Pilegaard. Op.cit.

The Cotonou Agreement made provisions for the ACP States to support the EU in International Trade arenas, yet the EU refused the request of the ACP State for the establishment of a Joint Steering Committee at the Multilateral level to collaborate on positions and strategies at that level⁵³⁴ In order to achieve the expectation of the Doha Development Agenda. But, having secured the ACP's cooperation in principle, the EU crafted a mandate for the EPA negotiations which went beyond the stipulations of the Cotonou Agreement and included the "Singapore issues" which the ACP States had all rejected within the last three years at the multilateral level. The inclusion of these issues was done in circumstances where no new offers were made by the EU. This approach seemingly exposed the EU's intention to use the EPA negotiations to achieve agreements through RTAs within the ACP States and thereby facilitate and promote its Global Agenda starting with its former colonies, most of which were already showing signs of discomfort in negotiating services and trade- related services including the "Singapore Issues". Furthermore, the processes by which the mandate to negotiate the EPA was achieved is also reflective of the compromise within the EC to agree on the Cotonou Agreements as the mandate was in fact a continuation of the Cotonou principles. The Cotonou and the EPA processes however, set the tone for the entire negotiations and the difficulties which the ACP had to face.

5.3.1 Launch of CARIFORUM-EU regional negotiations

The Regional phase was officially launched in Brussels between the 4-6 of October 2003, when the Council of Ministers of the ACP met with the European Union (EU) Commissioners for Trade and Development. The first Group to launch was the Central and Western African (CEMAC) Group⁵³⁵.The CARIFORUM States launched their

⁵³⁴ Byron, Jessica & Lewis, Patsy Op.Cit.

⁵³⁵ The Central African community (CEMAC) launch Oct.4,2003, these include Cameroon, Central Africa Republic, Chad, Congo (Brazzaville), Congo (Democratic Republic-Kinshasa), Equatorial Guinea, Gabon+ Sao Tome' and Principle.

West Africa launched 6th October 2003 include Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea Bissau, Ivory coast, Liberia, Mali; Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo. Eastern and

regional negotiations on the 16th of April 2004, in Kingston Jamaica and were the only configuration which had committed to negotiate a comprehensive EPA within the time allowed under the WTO waiver⁵³⁶. The region had some experience gained from negotiating the Free Trade Area of the America (FTAA) which had been stalled since 2001. The region had an established infrastructure for negotiations through the Caribbean Regional Negotiating Machinery (CRNM) which was set up specifically to negotiate trade agreements on its behalf

After a year and eight months of the Launch of the regional negotiations, CARICOM established its Single Market and Economy Regime (CSME). However, it had previously entered a Free Trade Agreement with the Dominican Republic (DR) which is a member of the EU's construct, CARIFORUM Group but not a member of CARICOM. The EU grasped the opportunity to press ahead with the CARIFORUM Group even as problems surfaced early in the early stages of the negotiation because of the EC Trade Commissioner's approach toward the development dimensions of the agreement and the problems of banana and sugar in the EU internal market reform.

The Caribbean negotiators had to negotiate with the EU negotiators whom had gained a reputation of being amongst the best and indeed arguably, the most formidable in the world, being so experienced in tough negotiations both at the multilateral and bilateral levels in opening up markets and protect Europe's economic interest⁵³⁷. They are supported by the vast economic resources of Europe and its very huge internal market. The CARIFORUM region therefore, was always at a disadvantage in almost all areas:

Southern Africa (ESA) launch Feb. 7, 2004. In Mauritius; include Comoros, Djibouti, Eritrea, Ethiopia, Malawi, Mauritius, Madagascar, Seychelles, Sudan, Zambia and Zimbabwe. East African community (EAC) launch include Kenya, Uganda, Tanzania, Rwanda and Burundi. South African development community (SADC) launch Dec. 2004. Include Angola, Botswana, Lesotho, Mozambique, Namibia, South Africa, Swaziland and Tanzania. CARIFORUM launched April 16, 2004. Pacific Islands launched 10th of Sept. 2004. Include Cook Islands, Federated States of Micronesia; Fiji, Kiribati, Marshall Island, Nauru, Niue, Papua, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu.

⁵³⁶ Under the terms of registration (Waiver) of the Cotonou Agreement approved at the WTO Ministerial in Doha, in Nov.2001, the waiver granted to the EU would last to the 31st December, 2007, by which time a new WTO compatible agreement had to be in place.

⁵³⁷ Laurent, Edwin: *Understanding International Trade: A Caribbean perspective*, (Ian Randle Publishers, Kingston, 2007). p. 22.

human and financial resources and very limited exposure in negotiating Free Trade Agreements. Furthermore, CARIFORUM markets are relatively weak, and its institutions are supported by poor infrastructure. Their economies are agricultural in nature and heavily burdened by debts. In the circumstances of these negotiations, CARIFORUM markets are not of great value to EC exporters, nor are they very relevant as exporters to European markets.

Therefore for the purposes of these negotiations the EC seemed to have had three main economic and policy objectives: (1) push the Global Europe Agenda in terms of the 'Singapore Issues' more so, the Government Procurement component, (2) to open up CARIFORUM markets by liberalization to achieve WTO compatibility, and (3) tie the region to Europe through the MFN clause so as to secure its interests with respect to competition from the emerging markets namely; China, India, Brazil and also from the developed countries such as Canada and the USA, its main rival in the Industrialised North. It is argued that in this regard, the CARIFORUM-EC negotiations was of significant interests to Europe because this region was the only Configuration which had committed to negotiate a comprehensive agreement which if succeeded, would have provided Europe's global agenda with a huge fillip.

Therefore, from very early in the negotiations Mr. Pascal Lamy demanded that the CARIFORUM States should establish a Custom Union. The CARIFORUM States rejected the demand and argued that a custom union was inconsistent with the model of integration which the region was pursuing. This demand was made by the EC with full knowledge that the Cotonou agreement which was still in force had mandated that each region had the right to decide its own integration processes and at its own pace. Lamy's demand was therefore in contravention of the letter and spirit of the Cotonou Agreement and he seemed to have been paying no regard for the dictates of the Cotonou Agreement. It is argued that this type of disregard for the Cotonou provisions had created the perception that the EU was not genuinely serious about honouring the provisions of the agreement which was intended to guide the processes. It exposed some aspects of Europe's double standards which were even more evident throughout

each phase of the negotiations. Because, when it suited their cause, the EU endeavoured to rely on the provisions of Cotonou agreement, and then to disregard the provisions of the agreement when they so desire. For example, in the all ACP phase, the EU rejected the ACP's demand for a legally binding framework to take the parties into the regional phase, however, the EU rejected those demands arguing that the Cotonou Agreement already made provisions for the framework, a position which they have maintained throughout the negotiations at that level, while the EU's demand for the establishment of a custom union by CARIFORUM was not in keeping with the tenets of Cotonou which mandated that each region should determine its form of regional integration and within its own time. In addition, the parties had agreed very early in the negotiations to set up a Regional Preparatory Task Force (RPTF) and a regional network of non-state actors and source funding for their operation from international donors. The Regional Preparatory Task Force (RPTF) commenced its work to make the linkages between the parties to the negotiations and the needs which they have established. But the EC it was argued began to frustrate that body in its work⁵³⁸. So therefore, the EU was prepared to rely on the Cotonou agreement when it suited their cause and to abrogate its provisions as the needs arose. This discourse and posturing seemed to have permeated the entire course of the negotiations at the regional level even after Pascal Lamy left the EU and joined the WTO.

5.3.2 Pascal Lamy demitted office and Peter Mandelson appointed

Within weeks of Mr. Lamy's departure from the EU's, the new Commissioner Mr. Peter Mandelson⁵³⁹ in attempting to establish his footing in his new role and to impress the ACP States in building confidence in his stewardship, began to extol the virtues of the EPA for ACP development and the ostensible benevolence of the EU⁵⁴⁰, while carefully

⁵³⁸ Speech- Dame Billie Miller to the Joint ACP-EU Parliamentary Assembly, Vienna, Austria, June 20, 2006.

⁵³⁹ Pascal Lamy demitted the office of EU Trade Commissioner to take up duties as the Director- General of the WTO in 2005, and was succeeded by Peter Mandelson, a British Politician from the British Labour Party's Administration of Prime Minister Tony Blair.

⁵⁴⁰ See Mandelson's speeches in the early stages of his appointment. Mandelson's Speech to: 1) The Civil Society Dialogue Group in Brussels, Jan. 20, 2005. In setting out his vision of the EU's development for ACP, he argued that development goal will not follow the "classical, hardnosed, free trade agreements" and that the

disguising the protectionist and mercantilist trade strategies and policies being pursued by the EU and how it had intended to use these negotiations to facilitate the Global Europe project, which was by then caught in the throes of the multilateral system and stalled. But within months of settling-in the, EU Trade Commissioner and the negotiators started to change their positions and began to pressure the ACP States in many areas of the negotiations by making demands which were contrary to the principles outlined in the Cotonou Agreement.

Further, at all material times the EU negotiators were clear as to the authority and bona fides of their counter parts in the negotiations. However, the EU parties were thickly cloaked behind the veil of their compartmentalized Institutional Infrastructure and this had created problems, not only for CARIFORUM in the initial stages, but also for the rest of the ACP Groups⁵⁴¹. For example, part of the early set back in the negotiations which the ACP States encountered was due to their understanding that when they negotiated with the DG Trade they were in fact negotiating with the EC, but they were made aware by DG trade that DG Trade could not bind the other DG's within the structure of the EU system and so, for almost one year after launch of the regional negotiations, the ACP States were not really clear in their own minds as to whom they had been negotiating and the differences in interpretations of the Cotonou Agreement and the development issues integral to the negotiations. Because, for the ACP States, the question of development financing for the EPA was very crucial, but the DG Trade

EU will not be going to the negotiations using the aid as a tool to get concessions and therefore be saying that "for every step we take, for every euro we grant in aid we insist on equivalent return to us in market access" He promised to set up a review mechanism to keep the EPA negotiations under continuous review. London School of Economics Feb.4, 2005 he said *"Tangible support for developments is as important and tangible as good governance. Poor countries with good governance potential, and they did exist, need tangible help with capacity building" and further that "Trade will not promote development without parallel investment in the supply side"*

⁵⁴¹ The commission has many parts within the structure there is DG Trade who led the negotiations, DG Development Role is limited, Dg Taxus deals with issues of Rules of Origin, and DG SANCO deals with sanitary and phyto-sanitary standards while the communication between the DGs is facilitated through the EPA-Task Force which is controlled in DG Trade.

which led the negotiations argued that they had no competence to negotiate development issues. The approach of the Trade negotiators was to refuse to address the development issues, but the ACP States knew they could not commit to trade issues without getting commitment from the EU on the question of development support. The problem took on monumental proportions under the new commissioner Peter Mandelson, who continued to ignore the claims of the CARIFORUM States for commitments on the development aspects of the EPA. The ACP States were also very sceptical about the EU's record in meeting its financial commitments on time.

The ACP States therefore had to find a way to temper the attitude of the trade negotiators under the leadership of Mr. Mandelson. The ACP States formed an informal alliance with the Non-State Actors and got the support of Oxfam which by then had formed a coalition to stop the EPA's⁵⁴². The Caribbean and African Diaspora in Europe and more so in the United Kingdom(UK) along with Oxfam decided to lobby the Labour Government which had just won the 2005 General Election in which these groups had supported certain candidates⁵⁴³, and Britain was in line to assume the presidency of the EC. In this regard., the British Labour Party from which Peter Mandelson was a member was moved to establish a committee to investigate the negotiations of the EPAs. The

⁵⁴² The Harare Declaration - A global call for action to stop EPA's: March 30, 2006. Umbrella Group of twenty nine (29) Civil Society Organisations namely; Mwelekeo wa NGO (MWENGO), Zimbabwe, Third World Network-Africa, Ghana, ACDIC, Cameroon, Alternative Information Development Centre, AIPAD TRUST, Zimbabwe, Alternatives to Neo-liberalism in Southern Africa (ANSA), Civil Society Trade Network of Zambia, CECIDE, Guinea, Christian Relief and Development Association (CRDA), Ethiopia, Economic Justice ,Network, South Africa, ENDA, Senegal, GENTA, South Africa, GRAPAD, Benin, Interoffice Group, Ethiopia, Labour and Economic Development Research Institute (LEDRIZ), Zimbabwe, Malawi Economic Justice And Network, Southern African People's Solidarity Network (SAPSN), SEATINI, Zimbabwe, Trades Centre, Zimbabwe, Zimbabwe Coalition on Debt and Development (ZIMCDD), Zimbabwe, Action Aid, ACORD, Both Ends, ChristianAid, ICCO, KASA/WERKSTATT OKONOMIE, One World Action (VIA Project), Oxfam International, Traidcraft see for TEXT OF DECLARATION: [Fhttp://www.twnafrica.org/index.php?option=com_content&view=article&id=132:harare-declaration-a-global-call-for-action-to-stop-epas&catid=47:atn&Itemid=72](http://www.twnafrica.org/index.php?option=com_content&view=article&id=132:harare-declaration-a-global-call-for-action-to-stop-epas&catid=47:atn&Itemid=72) (January 12, 2008).

⁵⁴³ Elgstrom, Ole and Pilegaard. Op.cit.

EC's approach to the negotiations suffered its first major setback⁵⁴⁴ which the UK Parliament issued its report on the EPA.

Based on the finding of the report, the UK Government decided to take action and broke ranks with its EU member States. The UK Development Ministries prior to the publication of the report of commons issued a Joint-Statement in which they were extremely critical of the Commission's policy and challenged it to change to take a non-mercantilist approach and not pursue any offensive interest. It urged that the EU "should make an upfront offer to complete duty free and quota free market access to each ACP region Group to enable the ACP countries to benefit from trade reforms and build their export competitiveness"⁵⁴⁵. In taking its stance, the UK did not seek to obtain the views of the usually sympathetic countries such as Denmark, Netherlands, Sweden, France, Belgium and Ireland, but acted independently. The UK's position therefore shook the EC Institutions, while the Commissioner for Trade tried to downplay its impact. However, its reaction was swift and strong. The Commission dispatched a letter to all its offices across the ACP region. The British Statement was condemned by Brussels as "a major and unwelcomed shift" in the UK's approach⁵⁴⁶. The Commission stressed that the British approach would not affect the EU's negotiating positions. However, the British Government was not phased about the tone and context of the Commission's letter which was leaked to the press. The UK's Department of Trade and Industry took the position that their action was based on principle⁵⁴⁷.

The statement was followed by the report which made specific recommendations to the Commission. Its demands were emphatic with respect to the slow progress in the Doha

⁵⁴⁴ The sixth report of the House of Commons International Development committee. It. C.68. "Fair Trade? The European Union's Trade Agreement with African, Caribbean and Pacific Countries. March 23, 2005. House of Commons London. Stationery office Ltd. April 6, 2005.

⁵⁴⁵ Elgstrom, Ole and Pilegaard. Op.cit.

⁵⁴⁶ Larry Elliot: "EU move to block Trade Aid for poor" (The Guardian UK, Thursday May 19, 2005).

⁵⁴⁷ Ibid.

Negotiations and its impact on the ACP's prospects. The report took the view that the EU was treating the negotiations like it was playing a "game of poker" and accused the Commission fostering ACP's fear by refusing to state its position clearly. It stressed the lack of necessity for the EC's approach to the negotiations and argued that it was unwelcomed and indeed more suitable when negotiating with countries of equal strength. It also lamented that the ACP States were under duress and emphasized the unequal nature of the relationship and warned of the pending failure were the EC to have continued along those negative lines and worsened the fears of the ACP⁵⁴⁸.

The detailed report and its demands left the EC very exposed to public scrutiny and brought pressure of the Commission to change its approach. The Parliamentary Committee called for less rhetoric on poverty alleviation and for the Commission to give more expression to fairer trade. It argued that it would reflect poorly on the EU if it were to fail to deliver on promises it made to the ACP States which could not be achieved at the WTO and committed the UK Government to work to alleviate the level of flexibility which will be needed to satisfy the interpretation of Article XXIV with respect to substantially all trade.⁵⁴⁹

In an effort to influence the period of liberalization which the ACP States would need, the report drew on the suggestion of the Commission for Africa which stated that the period should be about 20 years and called upon the Trade Commissioner to implement the monitoring mechanism he promised and further demanded that the monitoring unit should also address any negative aspects of the poverty reduction objective of the EPA's.

In a very explicit characterization of the impact of the Common Agricultural Policy on the economies of the ACP, the British Parliamentarians took the view that much of the EU Agricultural production and export is subsidized and that ACP markets will not be able

⁵⁴⁸ Sixth Report of House of Commons Op.Cit.

⁵⁴⁹ Ibid p.8.

to withstand such competition. It stated categorically that the ACP States should never be requested to liberalise their markets until the EU take steps to cut agricultural subsidies which distort trade. It was emphatic in demanding that “the transition period for full reciprocity in the Agricultural sector should be explicitly linked to CAP reform”⁵⁵⁰. This was very encouraging to the ACP States as it supported what they have been expressing across European Capitals. The UK’s concerns seemed to have undergirded the need to progressively liberalize the service sector of the ACP States particularly the financial and Tourism sector consistent with GATT’s article V and also the politically sensitive mode 4. The sensitivity of the UK’s stance in distancing itself from the EC and the wider Membership of the EU was highlighted by its pledge of support for negotiating for movement of unskilled and skilled persons to benefit many developing countries. Indeed it made recommendations on all aspects of the negotiation and in doing so, left the EU’s mandate very vulnerable to the demands of the ACP States.

The impact of the report had reverberated throughout the ACP States and among the Civil Society Group. The UK Parliamentarians not unlike Dame Billie Miller of Barbados brought great clarity to the currency of the situation when it charged that the EU ran the risk of jeopardizing the EPA if it failed to listen to the ACP States and that EU was abusing its dominance in the partnership to pressure the ACP States to accept positions which would be detrimental to their long-term development⁵⁵¹ and contrary to Cotonou.

The EU was not comfortable with the UK’s decisions and criticisms in light of the agreed European mandate. However, the mandate itself did not instruct that these negotiations should be focussed primarily on the trade liberalization regime to pry open the markets of the ACP States to their detriment. The fact that the mandate expressly required that the agreement be WTO compatible did not confine the discussions to only matters of trade and the EU’s agenda should overshadow the needs of the ACP States during the negotiations.

⁵⁵⁰ Ibid p.10.

⁵⁵¹ Ibid p.13.

5.3.3 The British Intervention: What difference?

The British position had placed the EC in a mode of reflection, because it exposed the depth of the double standards and “double talk” of the Commission and the corrosive approach that was being allowed by the Trade Commissioner. However, the Commission continued to push its agenda; without any change; and the ACP continued to take its case publicly with the support of the Non-state Actors. But even though the British had made their position known, by November 2005 the Commission produced its own staff working paper in response and emphasized development⁵⁵² during the UK Presidency of the European Council. The problem however, for the ACP States was that the British Parliament never followed upon the matters it raised after the publication of the report and the issuing of the statement from the Trade and Development ministries. The UK Presidency of the European Council made no difference to the ACP’s cause, because Mr. Mandelson continued to push the trade agenda to open up the ACP’s markets while refusing to address the supply side constraints. Seemingly oblivious of the spirit of the Cotonou Agreement on the question of the development dimensions of the EPA, Mr. Mandelson pressed the case with the UK Parliamentarian, Patricia Hewitt to try and get the British government to moderate their line⁵⁵³

The staff policy paper ostensibly was produced in response to the critics and the British position and also the concerns of the non-states Actors. But the ACP States were sceptical, because they saw no change in the attitude of the Trade Commissioner during the negotiation. The EC continued to apply pressure on the CARIFORUM on the question of the MFN clause demanding equal treatment be given to the EU by CARIFORUM States if they offer better treatment to emerging such as Brazil, China and India⁵⁵⁴.

⁵⁵² The Trade and Development aspects of the EPA Negotiations, commission staff working document, 9 Nov.2005.SEC. (2005)1459.www.tes.de/cotonou/downloads/official/ACPEU/EU+TRADOC_ACP+Nov.+2005. (Match 22, 2010). Downloaded April 10, 2010.

⁵⁵³ Elliott, Larry E U moves to Block trade aid for poor [The Guardian UK](#).Op.Cit.

⁵⁵⁴ Cronin, David “Not Such A brilliant job.” ([The Guardian UK](#). Wed. Oct.15, 2008).

So by the end of 2005 as the ACP and the EC prepared for the Hong Kong Ministerial in December, the staff working paper published by the Trade Commissioner highlighted the need to the greatest visibility of Global Europe and Member States were therefore requested to complement the sums available in the 9th EDF for EPA support in order to facilitate “Coordination and Coherence” to the EPA process⁵⁵⁵.

However to the great disappointment for the ACP States and also the Non-State Actors was that at the end of the British Presidency of the Council of the European Union, the British Government had done nothing further on the issues raised in the report and the UK seemed to have fallen in line with the demands of the Commissioner for Trade⁵⁵⁶.

The failure of the UK to carry the matter any further left the ACP to devise other strategies to get support for their positions as the Trade Commissioner continued to ignore their calls for resources to be committed for the EPA, before they are asked to commit to open up their markets for goods and services. The European Governments continued to passively support the Commissions pursuits; while publicly pronouncing the need for trade reform to benefit Africa and also announcing large Aid packages for the Continent. The Caribbean’s needs were never so publicly articulated and supported by neither the EU nor its Member States because arguably, these small states were not of any significant economic or trade prominence in the EU global trade outlook.

Indeed, at the launch of the Commission for Africa then chancellor of the UK Exchequer Mr. Gordon Brown, in reference to poor economic and social conditions in African States that “Justice promised will forever be justice denied unless the greatest tragedy of our time is met by the boldest financial plan for our time, bolder than the Marshall

⁵⁵⁵ Ibid p. 31.

⁵⁵⁶ Tom Sherman: “Trade Escape: WTO Rules and Alternatives to Economic Partnership Agreement”. Action Aid International, Johannesburg, South Africa. www.actionaid.org downloaded 19.7.2006.

plan for Europe in the 1940's"⁵⁵⁷. He gave support to the finding and recommendations of the report on Africa and called for "a lasting deep seated trade justice that would mean that Europe and the richest countries be honest about and address the scale of the waste and scandal of Agricultural protectionism, unfair rules of origin and much criticized economic partnership agreement and address, infrastructure needs-transport, power, water, telecommunications and technical and vocational skills-to build the capacity African countries need to trade"⁵⁵⁸. But, although the EU had not adjusted its mandate, nor changed its position on the EPA, the EU's stated position had exposed the incoherence in its policies toward the ACP States, a situation in which the Commission had full charge. However, the frustration of the ACP States continued to heightened, so much so that the then trade minister of Kenya Dr. Mukhisa Kituyi, remarked that the promise on which they had started the negotiations on the EPA, was that when the Cotonou Agreement expired no country would be worse off than under the Cotonou" but the current application being pursued by the EU went "beyond the contemplation of Cotonou"⁵⁵⁹. In light of the subsequent developments, it seemed therefore that the UK's position expounded by the Parliamentary Committee and the statements of the Trade Ministries was only intended to appease the NGO's which brought pressure to bear on the parliamentarian and were hoping that Prime Minister Blair would use his position as President of the EU to influence changes to the mandate. It is argued that Britain's inactivity was seen as not surprising because it was the British Government that was pushing African countries to accept the free trade agreement in services at the WTO as John Hilery of Action Aid International pointed out

⁵⁵⁷ Remarks by the Rt. Hon. Gordon Brown MP. On the launch of the commission for Africa report. London. UK. PM Brown has become Prime Minister of the UK, since June 2007. www.hm-treasury.gov.uk/speech_110305.htm downloaded April, 12, 2009.

⁵⁵⁸ Ibid.

⁵⁵⁹ Interview- Dr. Mukhisa Kituyi: with Paul Mason of the BBC, Monday 27, June 2005, reported in Trade escape: WTO Rules and Alternatives to Free Trade Economic Partnership Agreement. Action and International p. 11.

that the UK played or “double hand”, so that in the event the ACP States had to accept the reciprocal arrangement the blame would be laid on Brussels⁵⁶⁰.

There was indeed a great variance between the approach of the EC Trade Commissioner, Mr. Peter Mandelson toward the negotiation at the time which he took office and up to the middle of 2006. However the ACP continued to search for a counter position, failing which the negotiations would stall. The CARIFORUM State had committed to complete a comprehensive agreement and they were not prepared to allow the Trade Commissioner to further frustrate their efforts and caused them to suffer further delays which no doubt would have affected them as the closing time for the negotiations drew nearer. The Region therefore took a decision to take its case to the European Parliamentarians; through the Joint ACP-EU Parliamentary Assembly, which had scheduled a meeting in Vienna Austria, June 20, 2006, fifteen months after the British had issued their statement. As discussed in depth in Chapter two, the Barbadian Minister, Dame Billie Miller who addressed the Assembly had exposed the ‘double talk’ of the Trade Commissioner and the serious ethical questions which his conduct had raised and suggested how these could be rectified in the best interest of the ACP regions.

5.4 The Reform of CAP and the banana regime

The EU banana regime and the ACP export of the products are indeed deeply connected to the region’s political, economic and historic ties, as the Banana Industry in the Anglophone had been connected to the UK banana interests, and when the UK joined the EEC in 1973, it guaranteed its market and suppliers by ensuring that Banana export from the Caribbean was not disturbed and so, in the Lomé Arrangements a separate protocol was signed to deal with ACP banana entering Europe.⁵⁶¹ The EU had

⁵⁶⁰ Simon Jeffery “Blaming Brussels” [Guardian UK](#). May 19, 2005.

⁵⁶¹ There are twelve ACP countries which export Bananas to the EC. Latin America Region is the largest supplier of banana to the EC. The EC is the largest importer of Banana worldwide.

given an assurance to the ACP in 1989 when Lomé IV was agreed that its banana exporters would not be harmed when the reforms were completed. But that was a promise which was never kept as Britain and France came together to protect their interest in the dispute over regulation 404/1993, but by 1995 they reneged on their commitment and bananas had been the leading agricultural export of the Eastern Caribbean States (OECS), Jamaica and Belize contributing significantly to GDP and employment in these States was severely injured under the EU internal market reforms.

In 1992, Europe decided to reform its internal market under the Common Agricultural Policy (CAP) and the Latin American producers by 1993 had challenged the EC framework agreement for banana. The EU had negotiated with them to avoid the issue being taken to the Dispute Settlement Body of the WTO. This brought pressure on the banana exporting countries of the ACP Group, but in the efforts to settle the problems the Caribbean States were marginalized. So much so, that by 1994, it became quite obvious that the Caribbean would be prevented from being a party to the dispute even though they had been requested to join the action. Their 3rd party Status made it not possible for them to have had any impact on the outcome of the dispute. The US brought pressure on the EU which it resisted for sometime. But in 1995, the US Trade representative Mickey Kantor announced that it would seek to resolve the issue at the WTO. The Caribbean at that stage began to question the extent of Europe's commitment to trade co-operation, because by 1996, the EC had published its Commissioned Green Paper and the ACP-EU Joint Parliamentary assembly, took the view that the proposal put forward by the Green Paper threatened the partnership and the joint approach to the management of the relationship.

In the steps taken by the EC to manage the changing relationship, the ACP States became sceptical as the genuineness of the EC in maintaining the integrity of the relationship. It seemed that the Green Paper was only meant to give effect to changes which had already started to take shape in Europe which had grave implication for the ACP. However, the ACP States were not consulted nor their views ever considered. It

was therefore not surprising to the Caribbean when it's requested to be consulted in the CAP reform under the Single European market (SEM) regime was denied by the EU.

Since the introduction of the Single European Market (SEM) and the subsequent challenges by the “dollar” banana producers in Latin America and the U.S.A, the banana industry in the Caribbean has declined dramatically. Indeed, by 2008, the largest producers of banana for the export and domestic markets in Jamaica had closed some of their farms indefinitely⁵⁶². This had significantly affected the livelihood of entire rural communities in the Eastern Parishes of the Island a similar situation resulted in St. Vincent and the Grenadines.

Banana as a contributor to Agricultural GDP in the Eastern Caribbean was very dominant. In 1995 at the height of the dispute it contributed 33% in St. Lucia, 23% in Dominica, 26% in St. Vincent and the Grenadines. It was a main contributor to employment in rural communities in these Island States; and it represented a substantial source of foreign exchange inform from exports in Dominica, St. Lucia , and St. Vincent and the Grenadines ⁵⁶³. Bananas were not being negotiated as part of the EPA, as the protocol for the banana regime still existed under the Cotonou Agreement but the CARIFORUM States wanted to include it in the negotiations. However, the EU resisted. The decline and the eventual demise of the banana industry across the region came as a result of the adjustment in the EU's internal market (SEM) and the subsequent challenges under the WTO as the EU sought to protect its interest at the detriment of its ACP partners.

The ACP states and more so the small and vulnerable Island States (SIDs) of the Caribbean paid the ultimate price in the global trade dispute between powerful these global actors and although the Caribbean had a very legitimate interest to protect in the

⁵⁶² Interview- Dr. Marshall Hall retired Managing Director of Jamaica Producers Ltd. March 3, 2009. Kingston Jamaica.

⁵⁶³ Derné, Marie-Claude & Nurse, Keith: “Caribbean Economies and Global Restructuring”, Ian Randle Publishers, Kingston (2002). pp.52-53.

outcome of the dispute, they were not allowed to join the dispute notwithstanding their application to participate. They were however permitted to have a third party status and therefore could not affect the outcome. It is felt across the region that the banana dispute and its outcome was not only unfortunate for the region, but was an injustice because the region's legitimate interests were subverted in a dispute between two major transatlantic trading partners⁵⁶⁴ while the party which stood to suffer the greatest economic injury was not allowed to join the dispute and thereby denied the right to protect its vital interests. The region came out on the losing end with devastating effect, economically and socially, because even though both sides to the dispute had given some assurances to the Caribbean that they would not do anything to harm the region's interests, both had reneged on their undertakings⁵⁶⁵, which in effect raised ethical questions on the part of the EU, the USA and to a lesser degree, the WTO dispute settlement mechanisms.

It has been a widely held view in the region that the EC had not done all it could to have the Caribbean States joined the dispute in their own right because of EU's self interests. It is argued that had the EU pressed hard enough to have the Caribbean States joined the dispute, then the Caribbean could have achieved for themselves an outcome which the EU could not. The Caribbean wanted to apply to have banana treated as a 'sensitive' product, but the EU seemed not to have supported such an initiative. But, it was further felt that were the Caribbean allowed to join and made its case for special treatment of its banana export, then, that would have had implications for the question of sugar which was to come later. And this therefore was the real reason for the EU's lukewarm support the region in their application to fully participate in the banana dispute. Furthermore, any negotiation to settle these issues with the USA

⁵⁶⁴ Interview - PJ Patterson March 3, 2009.

⁵⁶⁵ The US President Bill Clinton had promised the Caribbean at the 1994 summit of the Americas not to raise a challenge, even though the US was against the preferential agreement with the ACP, but instead were not happy with the treatment meted out to the Latin American countries under the EU Banana Regime. The EU had given assurances also when they were about to legislate the CAP reforms in tandem with the new internal market arrangements under the SEM.

would involve the Caribbean, had they been allowed to join and the EU did not want such a situation to have taken place as it would have created a greater difficulty in managing the settlement processes and the implications for CAP reforms which were on going. The Caribbean had several meetings in Washington to get the US to support their cause to have them join the respondents in the Banana dispute⁵⁶⁶,

But these too were not fruitful.

In the end, the region was forced to settle for aid to assist in diversification of farms and retraining of farmers and other employees in their banana industry. However, in most cases the aid support is very difficult to access or woefully inadequate at best. Indeed, the Jamaican experience is a prime example of how local groups which have sought funding have failed to meet EU criteria to access funding under the “Rural Diversification and Enterprise Development”⁵⁶⁷. Established by the EU to give support to displaced farmers. Investment in the Industry has also shapely declined and the leading producers of bananas in Jamaica had taken a wait and see approach regarding the extent of the price adjustment which the EU will make after 2015⁵⁶⁸, before deciding their final position in the banana export business.

The extent to which the EU disregarded the Caribbean, and the rest of the ACP’s calls for the EU to pay greater regard to the banana industry and the plight of the workers and the decay of rural communities which were affected by the Trans Atlantic Banana Dispute, has illuminated the view that the EU was more concerned about its domestic interest⁵⁶⁹ as it is indeed quite instructive, that the manner in which the EU dealt the various commodities of the ACP States because while the EU denounced the Sugar

⁵⁶⁶ PJ Patterson had meetings with leading political figures in Washington including the Congressional Black Caucus seeking their support in the Caribbean cause. Interview – P. J. Patterson March 3, 2009.

⁵⁶⁷ Majorie Stair, “Groups fail to meet EU criteria” Sunday Gleaner, Jamaica, Nov. 23, 2008.

⁵⁶⁸ Interview- Dr. Marshall Hall, Managing Director of Jamaica Producers (Retired) March 3, 2009. Kingston. Jamaica.

⁵⁶⁹Statement by Dr. The Ralph Gonsalves Prime Minister of St. Vincent & Grenadine to The High-Level Plenary Of The United Nations General Assembly, New York, 16 September, 2005.
<http://www.un.org/webcast/summit2005/statements16/stvin050916eng.pdf> (December 12, 2008).

Protocol which was a separate and legally binding Agreement of indefinite duration, it treated banana, rice and rum differently. What seemed clear from the EU's action in dealing with the commodity protocols was that while sugar is produced in Europe and its OCTs, banana is not. But Europe only has commercial interests in the trade of the product and not a primary agricultural interest as in the case of beet sugar producers in Europe and cane sugar producers in its OCTs.

Furthermore, sugar production in Europe was captured under the CAP and was subsidised, while banana being tropical product, not produced in Europe and therefore was not captured under the CAP subsidies. It was therefore in Europe's interest to denounce the Sugar Protocol and compensate its domestic producers as they were so entitled under the CAP, while there was no such obligation to ACP producers even though the ACP States had called for equal treatment because of legal and political obligations. In the end the EC paid a paltry sum to be shared by all ACP sugar producing States when compared to the vast sums which were paid out to its sugar producers. This treatment, it is also widely felt in the Caribbean was a betrayal of their special relations with Europe over the years and a breach of a contractual obligation which it unilaterally abrogated at will⁵⁷⁰.

What therefore emerged from the banana crisis seemed a classic expression of how the EU's policies have served to undermine the economies of the ACP region and in particular, the Caribbean State without the EU showing any compulsion to pay just compensation. In the case of banana, the dispute was in effect between the US and the EU and their large multinational co-operation involved in the production and export of Europe's most consumed fruit, though not produced in Europe.

The bananas from Africa, most of which is from the Cameroon entered Europe through France. Both France and the UK enjoyed the protection offered under the Lomé & Cotonou preferential arrangement for banana from ACP. Chiquita banana entered

⁵⁷⁰ CRNM UPDATE. Jamaica, Cote d'Ivoire and ST Kitts and Nevis had criticized the WTO Ruling arguing that it would eliminate well over 30,000 banana industry jobs in these countries.

Europe principally through Germany, a member State which is an advocate of free trade, and was therefore supportive of the liberalized market regime in Europe under the CAP reform and the (SEM). The original ACP Banana Protocol Countries therefore exported bananas principally to the country with which they had colonial ties⁵⁷¹, so the continuation of the colonial export arrangement continued to a large extent under Lomé.

The US sought to protect the interests of its multinationals in penetrating the European market under the reformed CAP. So, in as much as the US commercial interest was the pressure point to take dispute to the WTO; diplomatic initiatives were undertaken to resolve the issues and avoid the WTO ruling. The US had initiated the move to resolve the matter diplomatically, but there was a “stalemate”⁵⁷², because the EU would not relent on its internal reform commitments. Indeed, the banana case seemed to have exposed another aspect of EU’s policy incoherence because several Member States were not in favour of the regulations. However, but the Commission nonetheless pressed for a resulting in which the Caribbean paying the ultimate price of the demise of its banana industry⁵⁷³. In the end however, the real issue was never about market share or tariff, instead it had at its core, European protectionist policies and therefore the consequential damage to the Caribbean interest was merely collateral. The other ACP producers of bananas were not as affected as the Caribbean because they are beneficiaries of the Everything But Arms (EBA) special regime. The Caribbean took its case to the United Nations seeking the intervention of the UN Secretary-General to assist their cause.

⁵⁷¹ The original 12 ACP Exporters of banana to EU: Belize, Cameroon, Cape Verde, Dominica, Grenada, Ivory Coast, Jamaica, Madagascar, St. Lucia, St. Vincent and the Grenadines, Somalia and Suriname. Dominican Republic and Ghana started exporting bananas since 2000s. However, Cape Verde, Madagascar and Somalia stopped exporting in the 1990s Jamaica stopped in since the new EU regime was put in place.

⁵⁷² Charon Devereaux et al, “case study in US Trade Negotiations”. Vol.2. Resolving Disputes. *Institute of International Economics*. (Washington DC. 2006). P.112.

⁵⁷³ Germany, the Netherlands, Belgium, Austria, Finland and Sweden openly opposed regulation 401. However, the European commission was very reluctant to make changes due to the highly controversial nature of the matter.

In pleading its case to the Secretary-General, Dominica's Prime Minister, Edison James speaking on behalf of the Windward Islands argued that the future of these islands remained uncertain and this instability threatened peace in the region. He stressed that the peace in the region " ...and peace in the world depend so much on humanitarian dispensation of justice, and the action which has been taken against us in the WTO is not justice" The OECS leader invited Mr. Kofi Annan to visit the Islands to see first hand the extent of the devastation facing the windward islands on account of the WTO Ruling⁵⁷⁴. The Caribbean States were visibly upset at the turn of events in the banana dispute and it is felt that the EU wanted this outcome to get rid of the thirty- odd years of the non reciprocal preferential trade deal with the ACP States as this outcome could Europe with more leverage to deal with the USA at the multilateral level⁵⁷⁵.

These are issues with which the CARIFORUM States had to grapple while negotiating the EPA in circumstances where Europe was pressing for liberalization in trade for up to 95% of all trade and also for the region to make far reaching commitments without being provided with the requisite financial and technical support demanded by the region. The European approach to the problem appeared quite out of line with the spirit of the Cotonou Agreement and the partnership which had existed since 1975. The EU with full knowledge of the vulnerabilities of the ACP States sought to extract from them what it would expect from its economic equals in the Industrialised North.

5.5 ACP sugar and the CAP reform

The problem of sugar was another area in which the conduct of the EU raised concerns for the ACP and exposed the quality of the partnership between them. Production of sugar for the European market has had a history well in excess of three hundred years, the UK being the main importer of Caribbean sugar through the Commonwealth Sugar Agreement since 1925. At the time of its entry into the EEC, the UK guaranteed its

⁵⁷⁴ "Dominica says Caribbean banana-growers face disaster." (REUTERS, Oct, 2, 1997).

⁵⁷⁵ WTO Bananas: Suspense Builds on EU's Next Steps. It is felt that the EU wanted to find best approach to comply which would give it more leverage when negotiating with the U.S. in working out the final deal <http://www.bananas.org/f9/wto-banana-eu-arbitration-1721.html> (December 12, 2008).

Sugar suppliers that they would be able to continue supplying Sugar even after their entry. The 1975 Sugar Protocol between the ACP and the EEC was of indefinite duration and it guaranteed prices to the suppliers. Britain in particular wanted to be assured of supply of raw sugar from the Caribbean States, which at the time were principal suppliers of the product to the UK⁵⁷⁶.

Similar to the case of bananas, Caribbean sugar entered Europe through the UK. However, unlike the situation with bananas, the UK had neither commercial interest nor investments in the Caribbean at the time of the denunciation of the Sugar Protocol except for the involvement of Tate & Lyle⁵⁷⁷. But similar to banana, the region's sugar was a key contributor to GDP, Employment and Foreign exchange in flows⁵⁷⁸. Indeed, the guaranteed price for supplies of sugar was bankable and was used as collateral to secure financing for its production⁵⁷⁹.

Europe decided in 1992 to reform its Common Agricultural Policy (CAP) and introduced the single European Market (SEM). However, it was not until 2003 that they agreed on the content of the policy⁵⁸⁰. The internal agreement which was reached through a compromise of the French-German reform bench mark was bound to have an impact at the upcoming WTO Ministerial later that year because of the subsidies on Agricultural

⁵⁷⁶ Interview- P. J. Patterson March 3, 2009. See also the Lancaster House Statement: Consultations with developing Member Countries of the Commonwealth Sugar Agreement. 2-3 June, 1971.

⁵⁷⁷ Tate & Lyle operates in Trinidad & Tobago dealing in Caribbean Bulk Storage and Trading in Molasses which is a by-product of sugar.
http://www.tateandlyle.com/TateAndLyle/our_business/main_subsidaries/default.htm#Overseas
(December 12, 2008)

⁵⁷⁸ Give break down of contribution in each country.

⁵⁷⁹ Interview- Ambassador Derrick Heaven, Chairman of the Sugar Industry Authority, Jamaica. May 22, 2009.

⁵⁸⁰ On the 26, June 2003, in Luxemburg, the European commission Farm Ministers agreed a compromise deal on the European common Agricultural Policy (CAP). International Center for Trade and Sustainable Development Vol. 7. No. 24. 3rd July 2003.

production which were already agreed at the WTO. Among the Member States of the Industrial North, as the issue has had a substantial domestic agricultural constituency.

The EU was very keen to have the Doha Development talks re started and so merely four months before the conclusion of the al ACP phase of the negotiations and only three months before the Cancun WTO Ministerial scheduled for September 10-14th 2003 and a further, within one month of its decision on CAP, the EU granted the new EBA which had serious implications for the non-LDC sugar producers and blocked a request by Australia, Brazil and Thailand seeking to establish a WTO panel to rule on complaints against the EU sugar regime. The WTO Dispute Settlement Body (DSB) met on July 21, 2003 and there, the delegations from the aggrieved countries were quick to stress that they were not against the preferential treatment given to ACP States, but to remove the distortion which give protection to EU producers which were inconsistent with the EU's commitments to reduce subsidies under the Uruguay Round. They argued that the removal of the subsidies would assist competitiveness on the world market which be better for developing countries.

So, while the trio made no promise not to hurt Caribbean sugar producers, it seemed clear that they appreciated that their action would in fact hurt the ACP States, particularly the Caribbean which had only one LDC among its Members. Similar to the case of the banana dispute with the USA, the EU again promised to protect the Caribbean sugar producers but reneged on those commitments. It is suggested that the action taken by the trio, though it might have been unintended, it signalled the commencement of the demise of the ACP Sugar Protocol and was precipitated by EU's self interests and protectionist policies in re-organising its internal markets. This is so because by the 4th of August 2004, the WTO panel ruled in favour of the trio on the complaint brought by them. The panel ruled on the basis that the subsidies exceeded the WTO reduction commitment; levels on sugar under the Agreement on Agriculture (AOA). The EU's response to the finding of the panel which was confirmed by the WTO

appellate body on the 28th April 2005, cast a very long shadow over the prospects of the ACP non LDC sugar exporters. The first casualty in the Caribbean was the island of St. Kitts & Nevis which closed down its sugar industry. This continued throughout the period of the negotiation of the EPA, with the ACP sugar producing States grappling with a continuous state of uncertainty concerning their sugar industry.

The CARIFORUM reacted sharply to the WTO ruling as the regions spoke person on sugar, Guyana's Foreign Trade Minister Clement Rohee expressed disgust with the European on the issue of the Millennium Development Goals by pointing to the reform of the EU's sugar regime and argued the extent of how it undermined some gains made in the Millennium Goals. The minister drew attention to the Commission's alacrity in moving to press for ACP action plan for the sugar Industry, but in doing so, it glaringly ignored the demands of the ACP for a fair and equitable deal on sugar. The ACP's called for consultation with the EU seemed to have fallen on "deaf ears" in the Commission as the Caribbean States were expecting a less onerous reduction in the price of sugar and for the price to be adjusted over a longer period.

So, even as the CARIFORUM States were locked into very challenging EPA negotiations, they had to confront the sugar problems along with the fall- out in the banana industry across the region. The Caribbean leaders tried to get the EU to put sugar on the negotiating table, the EU flatly refused. The region then found itself in a real dilemma and had no particular answers to the difficulties being faced. The EU was firm on keeping its regime intact, and then dictates the terms on which the ACP banana sugar and rice can enter its markets; these were was not up for negotiations. The ACP must either, take the offer and get out of the production of these commodities or become efficient in production in order to stay in the business.

The Guyanese Minister called upon the EU Commissioner Mr. Peter Mandelson to honour his words and not renege on his promise to support the Caribbean sugar

industry. But the EC's non-response meant that the ACP's calls could not materialise and the region was very displeased about the EU's unilateral price cut which in their view had violated the spirit and basic tenets of the Sugar Protocol. The Caribbean contemplated legal action against the EU, but failed to pursue that course as some Member States of CARICOM were not in support as they felt it would be too costly and there was no guarantee of success⁵⁸¹.

The CARIFORUM States were so concerned about the development that the nineteenth meeting of the Council for Trade and Economic Development (COTED) endorsed the need to explore legal action and requested that the matter should go to the next meet of the CARICOM Heads of Government scheduled for July 2005. However the Caribbean lobby which was mounted in the European Capitals⁵⁸² to effect change to the formula used in the reformed regime for sugar had failed to produce the desired results. It seemed that the Caribbean States were just short of being naïve to believe that the EU would have relented on such a fundamental policy issue regarding the protection of the interests of their farming constituents in order to meet the needs of a region which was of no great economic value to Europe.

So, the Caribbean decried the action of the EU in the Sugar Plan which it unveiled on June 22, 2005 to overhaul the Single European Market for sugar. The Commission in that plan made cuts to ACP Guaranteed prices by 39% on the price of refined sugar over 4 years costing ACP Producers an estimated loss of €400 million per annum of which losses to the Caribbean was approximately €100 million per Annum. The region was most disappointed in the EU's petty offer of a mere €40 million in assistance for the period 2006 to be shared among all the ACP sugar producing countries⁵⁸³ while offering a package of almost €2 billion to its domestic producer. Both the Caribbean and the rest of the ACP reacted sharply.

⁵⁸¹ Interview - P.J. Patterson, March 3, 2009.

⁵⁸² Ibid.

⁵⁸³ RNM update 0510.

The Caribbean spokesperson for sugar, Clement Rohee at the 81st session of the ACP Council of Minister on the 20th June 2005 summed up the region's concerns thus: "it is impossible to overstate the devastating impact the price cuts and timescale proposed by the Commission will have on ACP countries. As far as the ACP is concerned, the proposed reform is too fast, too deep, and too soon." He concluded that "Under these conditions the sugar industries in many countries will be simply unable to survive, while in other producing countries the so-called reform will inevitably lead to severe cutbacks with disastrous socio-economic consequences"⁵⁸⁴.

The ACP States had realized the danger to which ACP sugar was exposed following the claims brought of the WTO by Australia, Brazil and Thailand in light of the EC's council Regulation (EC) No.1260/2001 dated June 19, 2001 and the organization of the EC market for sugar. The ACP at its 70th session of the Council of Ministers held in Brussels on September 27th to 28th Of November 2003, made a very important call for the EC to protect the integrity of the Sugar Protocol. It further called upon the European Union to: defend, maintain and honour the legal obligation and political commitment established in the Cotonou Agreement particularly the Sugar Protocol. The ACP seemed concerned that the EU may have wanted to make changes to the Sugar Protocol it therefore warned the EU that the mandated "review" referred to in Article 36 (4) of the Cotonou Agreement did not in any way imply a 'renegotiation' of the Sugar Protocol and that the revision provisions was to ensure WTO Compatibility of the sugar regime and to safeguard the benefits derived. The ACP States pressed to "further ensure that such a review did not entail any deeper shifting of the burden of internal the Europe's CAP reforms and its wider trade liberalization initiative onto the small and

⁵⁸⁴ RNM update 0510. Others also reacted for e.g. Some Non-governmental organisations Non-governmental organizations and groups representing various industries also reacted sharply to the decision of the Commission by denouncing it as antithetical of the interests of the industrialized North.

vulnerable economies of the ACP Sugar supplying States”⁵⁸⁵. Indeed, this was a very heavy burden for these vulnerable island states to bear, even more so as they negotiated the EPA and faced the EU’s flat refusal to engage the region in discussing the new sugar arrangements under the EPA. In this instance ,the ACP States had invited the Commissioner to consult with them on a regular basis with respect to continuing the undertaking regarding sugar. However the EC disregarded those concerns and refused to consult with ACP States on sugar reforms in the SEM.

Having accepted that the EC was determined to carry out its stated plans regarding the sugar reform notwithstanding the ACP’s concerns, the group accused the EU of causing serious injury to the ACP sugar producing economies. The ACP group highlighted the EU’s double standards and policy incoherence which it argued was the manifestation of its protectionist and mercantilist trade strategies which seemingly had been the hallmark of the EU’s ‘Global Project” which had been linked to the EPA negotiations in a very fundamental way⁵⁸⁶. The inconsistency and incoherence exposed in the EU’s policies were not of necessity directed at the ACP’s non LDCs, but was caused from the competing interests within the EC and among its Member States and their domestic protectionist policies coupled with the trade strategies of the Commission⁵⁸⁷.

These factors however, seemed to have caused the EU to disregard the call of the ACP States for the EU to honour its legal and political Commitment under the Sugar Protocol and the Cotonou Agreement notwithstanding the EBA initiative, to maintain an adequate level of remunerative price for the ACP’s LDCs sugar supplying States thereby safeguarding the benefits that these States had derived from the export of sugar to the EU. The ACP had further requested that in light of the domestic re-arrangement of the EU market, the sugar protocol States should benefit along similar

⁵⁸⁵ Resolution on Sugar 78th session of the ACP council of Ministers, Brussels. Nov-27-28 2001.

⁵⁸⁶ Thomas, Clive Op.Cit. p. 22.

⁵⁸⁷ Elgstrom, Ole and Pilegaard. Op.cit.

lines as the EU farmers through an appropriate and dedicated beneficiary line, or the European Agricultural Development Guarantee Fund. The group further urged the EU should expeditiously establish a fund for modernizing the ACP Sugar Industries through research projects, not limited to, but include other ongoing support for research in Science and Technology or Capacity Building.⁵⁸⁸ These requests were “sidelined” and the EU instead was being perceived by some as using the mandated ‘review’ of the Cotonou agreement to undermine the legitimate interest of the ACP States by arguing the justification for the denunciation of the long standing Sugar Protocol⁵⁸⁹.

The review of Cotonou Agreement by virtue of Article 95 was due during the negotiation of the EPA Phase two, being May 1st 2004 to February 28th 2005. The ACP’s Sub-Committee on Sustainable Development had endorsed the proposals for review of the Cotonou Agreement to cover the areas of social sector, youth, Information and communication technologies, protection of Intellectual Property Rights, Humanitarians and Emergency assistance, and Island states of the ACP group⁵⁹⁰.

The EU responded with their proposals by the 25th February 2004. However, the Circumstances did not allow the ACP sufficient time to further respond and agree upon procedure in time to commence and complete the review. The position of the ACP on the timeframe of the review was made known at the 7th session of the Joint ACP-EU parliamentary Assembly 16th -19th Feb. 2004, in Addis Abba, Ethiopia where by resolution they agreed with the EU Parliamentarian to postpone the review until 2006⁵⁹¹.

⁵⁸⁸ ACP /25/015/05. Cer. 1. June 23 2005.Brussels.

⁵⁸⁹ Interview- Ambassador Ellen Bogle, former Jamaican High Commissioner to London and consultant to Lascelles Demercado Ltd. Exporters of Jamaican Rum. She participated in the EPA negotiations representing the Jamaican Rum Manufacturing Interests. March 23, 2009. Kingston, Jamaica.

⁵⁹⁰ ACP/84/002/04 Rev.1.

⁵⁹¹ Article 37 (6) states that “in 2004, the Community will assess the situation of the non-LDC which, after consultation with the community decided that they are not in a position to enter into Economic partnership

The ACP's Committee of Ambassadors was charged with the responsibility of conducting the review with the European Commission which had indicated its willingness to delay the review exercise until 2006.⁵⁹²

At the meeting of the 85th session of the ACP Council of Ministers held in Port Moresby (Papua New Guinea) May 28th-31st, 2006. The Council of Ministers took the position on the question of sugar from the LDC's that these States

"...intended to use the EBA sugar quota to the full, in accordance with the European Union legislation in particular council Regulation (EC) No.318/2006 on the common organization of the markets in the Sugar sector" and therefore it called upon the EU for the "abolition and suspension in full of all additional duties referred to in Article 27 of the Regulation (EC) No-318/2006⁵⁹³ as proposed by the European commission so as to leave only the common custom Tariff duties as imports of products of tariff heading 1701 originating in a least Developed country reducing by 20% on 1st July 2006 by 50% on 1st July 2007 and by 80% on 1st July 2008 all customs duty being entirely suspended as from 1st July 2009⁵⁹⁴."

The group insisted that the 2006/07 marketing year was like any other and therefore further called "on the European commission to implement regulation (EC) NO. 980/2005

agreements and will examine all alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with W.T.O rules."

⁵⁹² ACP/26/018/04/Rev.3. Report from the committee of Ambassadors to the 79th session of the ACP council of Ministers, Gaborone, Botswana 3rd -5th of May 2004.

⁵⁹³ Article 27 of the Regulation states that "for the most part, the customs duties applicable to Agricultural products under the W.T.O agreements are laid down in the common customs tariff. However, for some products falling within the scope of the Regulation; the introduction of additional mechanism makes it necessary to provide for the possibility to adopt derogations."

⁵⁹⁴ ACP/26/018/04/Rev.3. Report from the committee of Ambassadors to the 79th session of the ACP council of Ministers, Gaborone, Botswana 3rd -5th of May 2004.

⁵⁹⁵ in full and increase the quota by 15% per annum as specified and not as proposed on this would result in a retrogressive tendency and caused negative consequences for the orderly management of LDC raw cane sugar suppliers in this period”⁵⁹⁶.

The group was well aware of the impact the reform market would have on ACP sugar exported particularly the LDC’s and also the difficulties of accessing the EDF source for funding adjustment in the sector and therefore called on the European Union “...to give consideration to all the instruments and means of directing resources from the European development fund and the European budget towards providing national and sector specific support for the sugar for the LDC’s including non-committed or uncommitted funds that might result from the end-of-term review of the 9th EDF”⁵⁹⁷.

The ACP States were also concerned that the EU was on a path of restricting the benefits of the EBA by implementing Article 27 of Regulation 318/2006; and therefore undermines the intention of Regulation (EC) NO.980/2005 the spirit of which was to allow certain developmental assistance to countries classified by the World Bank as being least developing countries⁵⁹⁸. However, the ACP sugar producing States had their greatest fear realized when the EU adopted EC regulation 266/2006 indicating the measures to be applied to the 18 ACP sugar producing States and more particularly with respect to the concerns expressed by these States in terms of adjusting to the reformed sugar sector. The European Parliament passed a resolution earlier in January

⁵⁹⁵ This regulation established the G.S.P for the benefit of the LCDS.

⁵⁹⁶ ACP/26/018/04/Rev.3. Report from the committee of Ambassadors to the 79th session of the ACP Council of Ministers, Gaborone, Botswana 3rd -5th of May 2004.

⁵⁹⁷ Ibid

⁵⁹⁸ The special incentive are provide to the these State based on “an integral concept of sustainable development as recognized by international conventions and instruments such as the UN declaration and the right to development of 1986, the Rio declaration on Environment and Development of 1992, the ILO declaration on Fundamental principles and Rights at work of 1998, The UN millennium Declaration of 2000 and the Johannesburg Declaration on sustainable developments of 2002” Paragraph (7) Preamble Clause of council Regulations (EC) NO. 980/2005.

2006 which underscored the need for the EU to make available a sum not less than €200 million available to the ACP sugar producing States on an annual basis to help them to adjust to the fallout from the reformed regime⁵⁹⁹.

This resolution was preceded by the decision of the Joint ACP-EU Parliamentary Assembly in November 2005 which pointed to the need for adequate resources should be made available to support ACP sugar protocol States affected by the reformed. Each set of Parliamentarians recognized the extent to which the EU's sugar reforms would seriously affect the sugar industries in the sugar producing ACP non LDC States and the consequential effect on socio-economic condition of millions of their population. The group agreed with justification that the burden of the reform was disproportionately and unfairly passed out to them, because of all the concerned parties involved in the sugar problems, the non LDC's of the ACP Group were the least able to survive the shock.

The ACP group further argued that the loss they would suffer by 2013/14 would be approximately €1.77 billion and with the support of civil society they lobbied the EU at all levels with respects to their cause and legitimate expectation resulting from the fall out of the sugar regime, more so the economic, social and environmental consequences even then, the European Union pressed on with the reforms. The group called for no lesser treatment to be accorded to them, than what the EU would offer to their farmers in terms of support to adapt to the reform successfully.

In this regard, the ACP Council of Ministers set out a ten point demand on the European Union and the European Commission which exposed the gravamen of the issue they faced particularly in light of the EU's unilateral decision on the sugar regime. They called on the EC to: (1) "...Ensure that the same logic and principles, which led to the approval by the EU Agricultural council in November 2005, of an adequate package of

⁵⁹⁹ ACP ,Decisions, Resolutions and Declarations of the 83rd session of the ACP Council of Ministers May 28th - 31st, 2006.

support-and commensurate resources to enable the various EU stakeholder to adopt to the reform be applied to the traditional ACP sugar suppliers through a timely and adequate support package to enable them to adopt to the reform successfully...”⁶⁰⁰ (2) “... urgently honour its commitment for adequate and timely support for Sugar Protocol countries by allocating for the period 2007-2013 at least €510 million actually on a predictable and ring-fenced basis under the EU 2007/2013 financial perspective in order to enable the ACP Countries concerned to successfully implement their multi-annual Adaptation strategies and plans; (3)... adopt a fast track delivery mechanism of funds for the timely implementation of their respective multi-annual strategies... (4) “...Urgently re-allocate any unused funds from the €40 million earmarked for 2006 to the ACP Sugar Protocol countries that have submitted multi-annual adaptation strategies (5) ... supplement EU funds proposed to meet the adjustment needs of the sugar protocol countries by any unallocated and re-committed resources arising from the end of term review of the 9th EDF; (6) increase within the €1.5 billion being proposed for allocation to the European Investment Bank (EIB) for the investment facility of the 10th EDF, the €400 million as interest subsidy to €500 million with the commitment that the additional €100 million be earmarked to finance interest on loans to the private sector and other stake holders of ACP sugar protocol countries contractual with the EIB in the context of their respective multi-annual adjustment strategies and plans.; (7) “.. Provide a written confirmation that they will fully honour the guarantees and provisions of the Sugar Protocol, in Article 1,3,5 and 6 in the context of the new EU Sugar regime’ (8) “.. to confirm the principle that totality of the raw sugar requirements of the full-time refiners will be supplied within the complementary quantity (CQ) by the ACP Sugar protocol countries to the extent that they are able to supply’ (9)... “Adopt a new approach towards the 2006/2007 and subsequently ACP guaranteed price negotiations which is fully compliant with the negotiating framework established in the Sugar Protocol and which takes into account all relevant economic factor...” and (10)... “Ensure that in the

⁶⁰⁰ Ibid.

context of the ongoing Doha Development Round negotiation that: 1. the erosion of preference is limited to the minimum possible extent, 2. Sugar is classified as a sensitive product. 3. The special Safeguard Clause is maintained; and 4. In line with the WTO undertakings contained in Para 44 of the July 2004 framework agreement, the sugar Protocol is bound in accordance with Article XIII of GATT”⁶⁰¹.

The ACP Ministers convened in May 2006, and expressed deep concern over the offer made by the EU on sugar which amounted to an abolition of the Sugar Protocol as of October 2009 and as such was “tantamount to a unilateral remuneration of the longstanding trade and development instrument and as such is totally unacceptable”⁶⁰² The ACP States argued that under Article 36 (4) of the Cotonou Agreement, the ACP and the EU have affirmed the importance of commodity protocols and the need to review them in the EPA negotiation with a view to safeguard the benefits derived. Therefore bearing in mind the special legal status of the sugar Protocol, the ACP Council of minister were deeply upset at the EU’s unilateral action on the Sugar Protocol arguing the incompatibility of the EU’s sugar regime and the Sugar Protocol and called on the EU to immediately compensate the ACP Sugar Protocol States⁶⁰³. This proposal seemingly did not move the EU to respond favourably to the ACP States, because, by the time the ACP Council of Ministers met in December 2006, the EU on the 13 October 2006 approved the sum of €1.244 billion to finance the accompanying measures for the sugar protocol countries for the period 2007-2013. This sum was less than the estimated revenue loss of €1.77 billion under the new sugar regime; and the CARIFORUM State of St. Kitts and Nevis had decided to stop the production of sugar; and the European commission, the council of the EU and the European Parliament had agreed to provide €165 million for 2007 to assist the ACP Sugar producing States. This sum was way below the anticipate sum of €500 million and €250 million per year. The Group repeated its call on the EU to “make available on a predictable and ring-fenced basis to the ACP countries concerned adequate resources for the financing of the accompanying measures for 2006”⁶⁰⁴. It passed a thirteen point resolution in which it ,among other things, called for the EU to support the efforts of the ACP countries by stressing the need for the resumption of the negotiations of the Doha Development Agenda, the preservation of the long-standing preferences, the maintenance of the special safeguard

⁶⁰¹ Decisions, Resolutions and Declarations of the 83rd session of the ACP Council of Minister May 28th -31st, 2006.

⁶⁰² ACP Secretariat Press Release- Port Moresby, 31 May, 2006. 83rd Council of Ministers Meeting.

⁶⁰³ Ibid.

⁶⁰⁴ ACP Secretariat Press Release – ACP Council of Ministers met in Khartoum, Sudan, 6 December, 2006.

clause and the Declaration by the EU of sugar “as a sensitive product”⁶⁰⁵. The EU disregarded the ACP’s call.

The LDCs Sugar Ministerial Committee presented a report to the 85th session of the ACP Council of Ministers on the 23rd May 2007 in which it argued that the EU market access offer for LDC sugar in the EPA in which it proposed three phase of liberalization of trade in Sugar. The 1st phase being January 1, 2008 to September 30, 2009 under the existing sugar protocol regime, October 1, 2009 to September 30th 2015 for the second phase of transition and October 1, 2015 for the 3rd phase liberalization. They took the view that the offer lacked adequate information in addition, that the proposed safeguard limit of 1.3 million tonnes for ACP sugar is far too low also “that the ACP could be further squeezed on quantities by EU growers unless the restructuring plan takes out a minimum of 6.2 million tonnes”⁶⁰⁶.

What became clear to the ACP States was that the EU was not prepared to negotiate the sugar protocol under the EPA, neither was it prepared to negotiate a new protocol after the expiration of the Cotonou Agreement. The EU through Regulation (EC) 318/2006 and Regulation (EC) 980/2005 effectively brought the Sugar Protocol to an end. The EU’s justification for holding its position rest in it having defined the parties to the EPA’s and acknowledged that agreement would be signed bilaterally. The parties to the EPA would then be governed by GATT Article XXIV obligations along with the treatment of the Sugar Protocol itself. The effect of this interpretation therefore was to circumvent Article 5 (4) requirement of the Sugar Protocol without negotiation or consultation with the ACP States. This was done by completely disregarding the decision of the European Parliament’s on the sugar regime adopted in January 2006; which called for allocation of at least €200 million annually to ACP sugar exporting States and expressed concern that the “European Commission’s proposal were inferior to the funds agreed both by the EU Parliament and the Council for the period

⁶⁰⁵ Ibid.

⁶⁰⁶ ACP/63/048/07. SEDD/UG, Brussels, 23rd May 2007.

2007/2013. The Proposals for sugar in fact were “back loading” rather than “front loading” thereby placing the requests by the ACP States for “front loading” the payments to enable them to effectively and successfully implement their strategies in order to operate in a post reform situation⁶⁰⁷.

The Group again called upon the EU and the EC to “fully honour its obligation under Article 36 (4) of Cotonou and to urgently engage in a joint review of the sugar protocol with a view to safeguarding its benefits bearing in mind its special legal status”⁶⁰⁸; and to “honour the provisions of Article 5(4) of the Sugar Protocol which called for the taking into account of all relevant economic factors in the determination of the ACP sugar guarantee price and hence improve the offer for 2006/2007 in such a way as to provide the ACP with an adequate level of income comparable to the treatment afforded to EU best growers”⁶⁰⁹. The EU again, paid very little regard to the call of the ACP Ministers. But by then, negotiations for the EPA was quite advance and the EU was not offering any new proposal, holding steadfast to its internal regulation on sugar regime. This approach left the CARIFORUM States with very little space to manoeuvre as they were particularly hard hit by the EU’s decision on the Sugar Regime. Guyana which is a borderline non-LDC was particularly hurt because it could not benefit under the EBA, but could at the same time ill afford the injury to its sugar Industry caused by the reform. Guyana, therefore reacted sharply to the conduct of the EC describing it as being unjust. The ACP found itself in a bind due to the EU’s incoherent policies and regime for sugar, because the EU wanted to include sugar in the EPA by offering duty free access without quantitative restriction to non-LDC, but this would have affected the LDC’s offer and the EBA initiative. So, the EU sought to infuse sugar into the EPA and offered protection to the LDCs while satisfying WTO rules, by unilaterally renunciation of the Protocol.

⁶⁰⁷ CRNM Update.

⁶⁰⁸ Decisions, Resolutions and Declarations of the 83rd session of the ACP Council of Minister May 28th - 1st, 2006.

⁶⁰⁹ ACP/25/007/07. Brussels 24th May 2007.

This objective, they had hoped to achieve through negotiations within the EPA framework. However such approach would leave open the possibility for a mutual renunciation of the 1975 Sugar Protocol which was of indefinite duration by making sugar part of the trade arrangement under the EPA⁶¹⁰. Within that context, the Pacific Ministers had reacted swiftly by statement dated May 18, 2007, in which they sought clarification from the EU. They wanted the EU to adequately address their concerns over sugar⁶¹¹. But, while the ACP States fully understood the need for the adjustment of the sugar regime for it to be compatible with the WTO, it felt that the Commission was duty bound to negotiate a successor agreement⁶¹² instead of treating sugar as parts of all trade liberalization. The EU however, no longer wanted a separate regime for sugar. The EU justified the denunciation of the Sugar Protocol arguing that it could not fit into the changed world of today, because one set of the developing countries namely the ACP States were trading on one set of terms and the others by a different set of terms⁶¹³. However, the EC down played its own role in undermining the Sugar Protocol systemically after it had been benefiting since 1975 through earnings on the international and internal markets, which only came to an end when it had to reform the CAP and the subsequent challenges to their regime at the WTO. What is unquestioned is that for the EU, there was no fear of cartelization of commodities which could affect supply and prices in the new international commodity regime as was the case in 1975. Part of the ACP's problem is that as partners with the EC they had expected that there would be consultation on the question of the various commodity protocols. So while

⁶¹⁰ Serrano, Katrina A. "sweet like sugar: Does the EU new Sugar Regime becomes Fiji's bitter reality or welcome opportunity?" *Journal of South Pacific Law* (2007) p.189.

⁶¹¹ Press statement 54/07 May 18, 2007 at www.forumsec.org.fj/pages.cfm/newsroom/press-statements/2007/minimum-requirements-EPA-with-eu-t-out-htm. (March 29, 2010).

⁶¹² An interview with Arvin Boolell ACP ministerial spokesman for Sugar Trade negotiations. *Insight* Vol.6. No. (6 October 2007). p.6.

⁶¹³ An interview with Mariann Fisher Boel, EU Commissioner for Agriculture and Rural development in Trade Negotiations insights: Vol.6.No.6./October 2007 P.7. www.fes.de/cotonou/OTHER_BACKGROUND_TRADE/TNI_En_October_2007.pdf (March 13, 2010).

Commissioner Boel argued that there was “no Alternative” to this approach to reform the sugar regime.⁶¹⁴ The EU seemed more concerned about the efficiency of its internal market than with the fall out the reform would have on the domestic economies of its ACP partners. Even the UK which had been the main beneficiary of Caribbean sugar supplies gave its approval for the Council’s position, by welcoming “. the Council of Ministers decision to reform the EU sugar regime” because as it stated “to have left the regime unchanged would have signalled a distorted and wasteful use of resources within EU Agriculture”⁶¹⁵. The Caribbean was offended by the EU’s treatment meted out to ACP Sugar suppliers arguing that it treated the European farmer’s far superior to ACP Sugar suppliers and the EU’s conduct was tantamount to a betrayal of trust.

Arguably, the disingenuousness of the Europeans in dealing with the sugar issues can be argued from three perspectives, Firstly, that Europe had intended to undermine the Sugar Protocol to justify denouncing it. Secondly, in doing so, it wanted to avoid paying just compensation to the ACP States and thirdly, it wanted to cast the blame for the negative out come on the multilateral system. This is so because the EU, on its own initiative, created preference erosion among the ACP States by offering the EBA, shortly after the close of the all ACP phase of the negotiations in circumstances where more than fifty(50%) percent of the ACP States are LDCs⁶¹⁶. Europe then moved to re-organise its internal market, but refused to consult with the ACP states or indeed to have them joined as participants in the sugar dispute at the WTO as they had requested. This refusal, therefore kept them out of the negotiations or discussions to resolve the problems and finally, Europe by relying on its internal policies and the institutionalised political dynamics of protectionism to paid hefty compensation to is beet sugar farmers for the fall out caused by the new sugar regime, and indeed, all but

⁶¹⁴ Sugar Reform will offer EU producers long-term competitive future. Commission press release IP/05/776, 22nd June 2005.

⁶¹⁵ House of Lords European Union committee. 18th report of session 2005-06. Vol.1. the stationery office Ltd. 2005. HL paper 80-I. p. 12.

⁶¹⁶ Bernal, Richard, “Globalisation: Everything But Arms” Op.Cit. p. 23.

walked away from its commitment to its ACP partners. It is arguable that this conduct on the part of the EU was unjust, discriminatory and unethical in the context of the longstanding partnership.

The Commission, during the negotiations and the reorganisation of the EU's internal markets, seemed to have applied the "carrot and stick" approach in an unconventional manner to secure compliance in meeting its objective. The stick being the 39% reduction in guaranteed sugar price it allowed ACP States while the carrot was offered to the EU farmer as 60% compensation to only EU producers who voluntarily left the market. No such generous offer was made to any Member States of the ACP, instead the EU offered €40 million to all ACP sugar exporting states, in 2006/2007 on a take it or leave it basis. The cut in price of sugar by 39% was never discussed with the ACP partners which was a severe blow for the ACP sugar Industry⁶¹⁷. The region felt the EU reneged on its legal, moral and political obligations to the ACP and requested that the phasing in be staggered over a period of eight years. It argued that the EU has moved away from the original agreement and that the EC needed to get to a position which is more reasonable, fair and equitable⁶¹⁸ in its treatment of the ACP States.

The Heads of government of CARCOM States at their twenty-seventh meeting reiterated the urgent need for the EU to provide adequate funding for Sugar under the 2007-2013 and agreed that the President of Guyana, By the time the 28th Heads of Government meeting of the CARICOM Member States was held in 2007, the EU had moved to tariff liberalization and managed to tie sugar as an agricultural product to be treated under the general liberalization mechanism being negotiated. The Caribbean vigorously protested, but the irony of the political economy of sugar is that the EU although resisting the request of the CARIFORUM States to include sugar as part of the EPA negotiations so as to secure a new protocol was also moving to have sugar liberalised as an agricultural product The CARIFORUM States under pressure from the

⁶¹⁷ "Sugar Protocol under 'Attack" say ACP Ministers. *The courier*; July-August 2007. p. 9.

⁶¹⁸ CARICOM Press release, "Case for phased Sugar Price cut" February 17, 2005. CARICOM Secretariat, Georgetown, Guyana.

fall out of the new EU sugar regime however, was trying to transfer the benefit of the sugar protocol into the EPA⁶¹⁹. This initiative failed to materialise because the EU would not allow the Sugar Protocol to be re-introduced in the EPA as a separate commitment

5.6 Negotiating financial and technical support in the EPA

The need for funding was extremely critical to the effectiveness of the EPA, indeed, as discussed in chapter two, it seemed that the decision of the Francophone African States to accept Pascal Lamy's offer to start regional negotiations even before the close of the all ACP phase was influenced by the feeling that adequate funding would be in place for the EPA. In order to highlight the European antithetical benevolence extolled in promoting the EPA, it is imperative to explore the ethics of the use of aid funding to achieve the EC's Global Project and explain its role in the negotiating processes.

Firstly, the European Development Fund (EDF) is an extra-budgetary allocation which is managed to meet the objectives of the EU under the Cotonou Agreement and is the principal source of European International Development aid. However, while the Cotonou agreement stressed the importance of, equality in partnership, ownership, mutual obligation and dialogue, the EC had taken full control of the EDF, contrary to the common understanding and agreement as to how the funded were to be handled by the partners. The EC tried to use the aid factor to influence the outcome, but the Caribbean States pushed to deal with the question of financial commitments quite early. The funding for the EDF is determined by the European community and the EU is the world's largest aid donor and as a donor it has tremendous clout in the decision as to who gets aid. Therefore, while part IV of the treaty of Rome is the genesis of the European Development Aid Regime, administered mainly through the EDF since the 1st Yaounde' Convention, through Lomé I-IV, 1975-2000, it has always been the call of the EU as to how much funds will be allocated to the (EDF) or indeed for investment purposes, made available through the European Investment Bank (EIB).

⁶¹⁹CRNM update 0710. July 12, 2007.

During Lomé IV, the European Union in preparing for the mid-term review commissioned the “Green Paper” which became the “driving force” behind its external relations with the ACP Countries and other developing countries. However, apart from making the case for changes in the trading relation between the ACP and the EU it also championed the need for changes to its aid structures and programs.

The paper prefaced that “the debate on the future of ACP-EU relations must first take account of the new Global Environment’. It argued that “..not only does the new Global landscape offer the EU’s objective interest and those of its development partners; it also involves increased responsibilities for a player of EU’s size”⁶²⁰.

It further articulated the point that “for European Community faced with the difficult task of adjusting its economic and social systems and having to frame its political actions to fit a multi, rather than a bipolar world and prepare for eastward enlargement, there is now a new dimension for development cooperation, particularly with the ACP countries”⁶²¹. It continues by stressing that “as the 21st century dawns, relationship between the EU and the ACP countries should be put on a new footing to take account not only of changed political and economic conditions for development but also of changed attitudes in Europe. The document argues the decoupling of Aid from trade and that the Aid policy must be in keeping with European values and political systems. The approach is therefore to engage Aid support as an integral part of the New Global perspective of European development. Cooperation is not what it was in 1957 or 1975. It took the view that the EU now has cooperation links within a large number of countries and is present in all Regions of the world. Essentially, it laid down the responsibilities of each partner less ambiguously on the question of aid funding and clearly pointed the direction on the new paradigm of aid application as a matter of policy.

⁶²⁰ The Green Paper on relations between the European Union and the ACP countries on the eve of the 21st Century: Challenges and options for a new Partnership. European commission, Director-General VIII/I, Brussels 20th November 1996.

⁶²¹ Ibid.

The EU adopted new policy positions by the mid-term review of Lomé IV and so without the benefit of consultation with the ACP partners, the EU moved to link the Caribbean with Latin America for the purposes of Global Europe and aid became a major pillar of its external relations. The EU by a unilateral policy initiative pressed to remove some ACP States out of the category of LDC's. This it achieved with the support of and through the IMF and the World Bank. In this regard the rhetorical question as to the attitude of Europe on the question of aid support was put by Hon. Clement J. Rohee, Guyanese Foreign Minister thus: "why is it that whenever a developing country makes some degree of progress either on the social or economic front, they are invariable penalized by being "graduated" out of or disqualified as a recipient country in need of foreign Aid or development assistance?"⁶²². Because the EU used the mid-term review of Lomé IV firstly to give effect to its new approach to aid and trade with its ACP Partners and secondly to push to remove some ACP States from the LDC status. The EU and ACP entered the mid-term review negotiation very divided and the rancour persisted even up to the signing of the Agreement in Port Louis; Mauritius, the ACP exhibited deep acrimony⁶²³ further fuelled by the EU's insistence on graduating five Caribbean States out of the EU's designated LDC⁶²⁴.

This was an EU's driven position to which they were not prepared to make any concession, notwithstanding the pleas for reconsideration in light of the ensuring consequences of withdrawal of their status as LDC. The conduct of the EU in this regard was very chilling to the Caribbean even more so because as the EU moved to reduce the number of LDCs in the CARICOM Region, there was a simultaneous move

⁶²² Clement J. Rohue "the little you have well been taken away": presentation made in Georgetown Guyana May 18, 2001. Clement Rohee served as the minister of Foreign Trade and International cooperation, Guyana.

⁶²³ Clement J. Rohue. "Europe: Friend or Foe?" Presentation May 24, 2001, Georgetown, Guyana.

⁶²⁴ Ibid.

to graduate more African countries in the States of LDC⁶²⁵. The EU was relentless in this effort and in the end their policy to divide and rule prevailed.⁶²⁶ Europe was well aware of the ramification of this initiative (1) The Caribbean could not resist the delisting of its States, (2) African States being entered would not resist the offer of inclusion because of the benefits; and (3) that the Caribbean States carried the brink of sacrifices to keep the ACP solidarity over the years and that Francophone Africa was always the weakest link in the African configuration, The Francophone African were the most difficult to get on board during the early years of the ACP negotiations and renounced throughout the ensuing years as the Group least likely to remain firstly with the solidarity of the Group⁶²⁷. The real intention of the EU in taking that step became clear later as they moved to establish the enhanced offer of the EBA initiative.

It had been the case that the Aid program established in 1957 for countries which were former colonies of Europe was meant mainly for French Colonial Territories, who in 1973 felt that they would be called upon to share their Aid programs with Anglophone Africa, Caribbean and Pacific States; these are some of the same States which stood to gain from being listed as LDC's. The objective seemingly was to give more to Africa and lay the foundation for the fragmentation of the ACP and a breach of ACP solidarity, coherence and unity. Europe sided with the recommendations of the mid-term review and focussed its attention to Africa, shifting from the Caribbean because as it argued poverty was greatest in the Africa so the commitment to development of ACP States as a special group of developing States had waned in Europe as Global Europe took precedence⁶²⁸.

⁶²⁵ Ibid.

⁶²⁶ Ibid.

⁶²⁷ P.J. Patterson, Interview 2008; Kingston Jamaica.

⁶²⁸ Trevor Partift "The decline of EurAfrica? Lomé's mid-term review, review of *African Political Economy*, Vol. 23, Issue 67, March 1996. Page 53.

The experience of the mid-term review negotiations placed extensive strain on the ACP EU relations and heightened the extent to which the EU was prepared to use the its massive Aid program to get its policies through, notwithstanding the objectives of the ACP States generally. Not only was Lomé as a premiere progressive development agreement, but even its very existence was threatened.⁶²⁹

Europe was relentless in pushing its policies and after Eighteen months of negotiation the mid-term was agreed. Although trade reference remained on essential feature of the ACP-EU relation both in Lomé and under its success or the Cotonou Agreement the relationship was radically transformed in five material respects. Namely (1) end of non-reciprocal preference and to attain WTO compatibility (2) a greater emphasis on political dialogue to include Human Rights and Good governance Issues (3) Greater involvement of N.G.O's and wider private sector and civil society (4) As focus on policy declaration and (5) The formal rationalization of Aid and financial instruments, the State having been set for the negotiation of the Cotonou Partnership Agreement.

Within Eight months of the signing of the Cotonou Agreement, and even before the Agreement was ratified by all the EU member States the European Union made a signal move without any consultation with the ACP, announced the “everything but arms” initiative which significantly benefited 48 of the ACP States mostly in Africa to include the five which were recently “graduated” into this category in the mid-term Review process which it had initiated in the Port Louis Mauritius in 1995⁶³⁰.

The experience of Seattle seems to have been fresh in the minds of the EU and this move was geared to avoid a repeat in Qatar in November 2001. However the hand played by Europe in this regard had seriously affected the Banana, Sugar, and Rice exporting committee of the CARIFORM States in relation to the LOC. Within the ACP

⁶²⁹Gordon Crawford “wheather Lomé” The mid-term review and the decline of Partnership. *The Journal of Modern African Studies*, 34, 3 (1996) p.503.

⁶³⁰Clement J. Rohee. “Europe: Friend or Foa?” Presentation May 24, 2001, Georgetown, Guyana.

Group even which Caribbean Rum which once enjoyed a privilege position in the EC market was being undermined by the EU/US “Zero For Zero” agreement which in effect result in a phasing out if preferences for the product which now has to compete with cheaply produced rum from Brazil, Columbia and the Philippines.⁶³¹

Rohee argued that the Commission was not giving an indication on to its plan for the sugar regime but was in fact way playing a “cat and mouse” game with regard to the future of the sugar regime. However the depth of cynicism prevailing in the region as to the conduct of the EC is significantly highly as Minister Rohee supported Minister Anthony Hylton’s characterization of the EU conduct as possible “sneak attack Nickodemus style” with respect to the Sugar Protocol⁶³². These views were expressed no less than four years before the EU unilaterally denounced the Sugar Protocol.

It is argued that Europe has set out on a path since 1997, not just to reorganise the trade and cooperation arrangements which existed since the first Lomé 1975, but to eliminate the Sugar Protocol which was legally binding and of no fixed duration. Europe wanted to keep faith with its international commitments to give special treatment to LDCs, so it moved early to eliminate many of the leading producers of sugar from its lists of LDCs to include six Caribbean States and Fiji, and Mauritius so that their plans to initiate the EBA regime would not benefit these countries which were de-listed and therefore the impact on the quantities of sugar entering Europe duty free would be less. The EU then issued the regulations on the Everything But Arm(EBA) initiatives without any consultation with the ACP States⁶³³. This move was arguably done in time to avoid the problems faced in Seattle from recurring in Quatar held in November 2001, but it had very serious implications for sugar producers in the wider ACP group⁶³⁴.

⁶³¹Ibid.

⁶³² Ibid.

⁶³³ Clement Rohee, ‘Europe: Friend OR Foe?’ OP.Ct.

⁶³⁴ Ibid.

For the EU to have “graduated” five Caribbean countries out of the LDC category and “graduate” more African countries into the LDC’s, then penalize the Caribbean by restricting their Rum had prompted one Caribbean official to declare that “.. Irrespective of how you turn or twist it, something is not only inherently wrong with this approach; it is morally and ethically unacceptable”⁶³⁵.

But notwithstanding the increase in the number of LDC’s and the Aid and Trade offers made to them under EBA, which assisted the EU and ACP to obtain the waiver for Cotonou at the W.T.O. Ministerial, the ACP states in the main was still opposed to the commencement of a new round until the developing countries take steps to deal with their concerns therefore they saw it fit once more to bond together to stop the concern W.T.O. ministerial in 2003. This was viewed as a victory for the developing countries, which posed very challenging issues for the EU, which now had to find a way to get the talk going and keep the Doha Agenda alive but linked to the Global Europe Initiative to include the so called “Singapore Issues” on the WTO agenda. The negotiation of the EPA would be an ideal forum. The EU approach to the negotiation of the EPA seemed to support the position that it was more driven by EU’s policy to extend its soft power, as a Global player or indeed as a serious development tool⁶³⁶.

5.6.1 The Caribbean’s response and EU’s appeasement

During the negotiation for the EPA, the Caribbean faced peculiar challenges, mainly in the area of capacity building and infrastructure difficult. The region had by then accepted the reality that in a hostile global trade environment that it had to face those realities, but, however it was prepared to stand up in its own cause.

The Caribbean was therefore well aware that aid and donor fatigue coupled with the demands of an enlarged Europe were forces which had contributing to the decline in aid

⁶³⁵ Ibid.

⁶³⁶ Katharina Ann Serrano “Economic Partnership Agreements; Machiavellian Instrument of EU Trade Policy of Samaritan development tools?” *International Journal of Private Law*. Vol.2 No.3/2009.p.290.

sources. This was fuelling the posturing of the developed countries from meeting their commitment to allocate.07% of their GDP as development assistance to developing countries by the year 2020. In all of this however, the region's receipt of grant aid, soft loans and concessionary financing had steadily declined since the 1990's. In the circumstances it had not been lost upon the Caribbean that aid has been a significant factor in developing the economies of the region, though there is no right to Aid. Ambassador Bernal pointed out that for the CARIFORUM region there is a great need for funding to address the implementation cost of the EPA, which justifies the call for EC development but certainly not as an entitlement⁶³⁷.

But while appreciating the context for Development Assistance, there seem to be different approach to the question of Aid at the highest political level. The then CARIFORUM spokesperson at the WTO. argued that the "search for Aid should not be seen as mendicancy or as a search for handout from the industrial countries" he made the case that "if countries in the south are to take advantage of the opportunities offered, and deal with the challenges posed by trade liberalization and globalization, the need help both at technical and financial nature."⁶³⁸ However, the conclusion of the EPA by the CARIFORUM States was created by severe criticism from academia, Labour Unions and N.G.O. and Politian and Diplomats⁶³⁹ which prompted the Jamaican P.M to repudiate the attitude and appealed to the region to "purge" the type of "Mendicancy which seemed to have emerged in the region"⁶⁴⁰.

⁶³⁷ Bernal, Richard "Globalization": Everything But Arms. The EPA and Economic Development. Grace Kennedy Foundation Lecture 2008 p.8.

⁶³⁸ Clement Rohee. "the little you have will be taken away" Presentation May 18 2001, Georgetown, Guyana.

⁶³⁹ See Prof. Norman Givan, Clive Thomas, Havelock Brewster, Anthony Hylton, Sir Shirdath Ramphal, Sir Alister McIntyre; Regional Journalists and Academics.

⁶⁴⁰ John Mayers; "Golding slams critics-say they suffer from mendicancy", Jamaica Gleaner, February 1, 2008.

Dr. Bernal in defence of the EPA agreement pointed out that the Aid component of the EPA was necessary and does not in any imposing upon or is substituted for the existing EC aid package for the Region. He stressed the point that in the negotiation, the Region had long passed the “Supplication of Ex-colonies” in their response to former colonial countries for Aid, and preferential treatment expressed in special quotas and pricing mechanism. The confounded that the Region’s diplomacy was not based on “mendicancy” but by “hard bargaining to extract every gain from a group of more powerful countries with little real need for CARIFORUM Markets, most especially the minute CARICOM Markets”⁶⁴¹.

By the time the EPA came to be negotiated in the Region, the EU Trade policy under the Prodi Commission 1999-2004 was well established, and the ACP had embraced the economic imperative of the EU’s policy to collectively take the transaction cost into account when dealing with the effect of market opening. However, Europe has a trade policy which is Global in nature and its institutions are highly compartmentalized based on Region’s, therefore in its attempt to bring coherency to this policy, Europe shifts position from time to time leaving its ACP partners behind.

The EC’s policy, it is argued was articulated to have taken “a principled position in support of multilateralism but one of responsibility in seeking to complete each of the bilateral and regional negotiations already launched and not yielding to pressure to open-up new Free Trade Area (FTA) vistas at the expense of ongoing W.T.O negotiation.”⁶⁴² This allowed the EU to confirm itself as the “greatest supporters of multilateralism, while keeping an extensive network of FTA’s”⁶⁴³.

⁶⁴¹ Richard Bernal, Grace Kennedy lecture 2008. p. 10.

⁶⁴² European Commission: Trade policy on the Prodi Commission 1999-2004. An assessment. Brussels, 19th Nov. 2004 p.12.

⁶⁴³ Ibid.

It is further argued the Caribbean has been part of that network of FTAs, however, it realized the importance of that network to the EU Global Trade Policy and its linkages at the WTO with respect to the Development Agenda and the need to both open-up market in Trade and Services. This is an EU initiative to protect its vital Interest in terms of the “Singapore Issues” and the impact on their domestic and other Internal Trade Policy. The Negotiation for the EPA presented the Caribbean with the an opportunity to negotiate a comprehensive trade agreement with the EU in order to extract concession in light of EU’s Global Agenda and to make maximum gains and to create the Global precedent among developing countries which the EC wanted to use as a template for future FTAs, as it moved to influence in a significant manner, the WTO Negotiations.

The EU’s global agenda was the driving force behind its negotiations with the ACP States, because if it were to succeed in getting the ACP States to cooperate at the regional level to produce the kind of EPAs which committed them to certain obligations which have direct implication for the multilateral system, then it would have without doubt add to their overall benefit. He EU needed to have settled with the region on a way forward in the areas of trade in services in a comprehensive agreement.

5.6.2 EU’s strategy in negotiating cooperation

The EU has developed and has protected the strategy of keeping the question of Development Aid financing until the very last leg of negotiations with the ACP. The negotiation for the EPA was no different. So while the Cotonou Agreement addressed the question of financing for development cooperation, the Caribbean was very vocal in its call for support to give effect to the EPA and to address attendant burdens on the region. The Caribbean carried its line of argument forcefully by explaining that the EU was making demands for liberalization and there is a legal and moral obligation to make funds available to support the reform necessary and the anticipated fallout during the transition period. So, while the Caribbean was expecting development support, it knew

that if it did not demand it, then it would not be automatically made available⁶⁴⁴. The call for such support must be justified in an atmosphere where Aid support is diminishing and has no real tradition in a Free trade Agreement. The Region argued and relied upon its uniqueness to justify their demands for Aid support to implement the EPA, and for support for the Sugar and Banana sectors⁶⁴⁵.

By the close of the negotiation the Region had made significant gains in development support for the implementation of the EPA. The final and most significant break-through for the CARIFORUM Region at the Montego Bay meeting between the Heads of Government of CARICOM and the EU Commissioners Peter Mandelson and Louis Mitchell, in early October 2007. The Commissioners had convinced the CARIFORUM Political Leaders as to their commitments and source of funding to deal with the implementation of the EPA in the region. The EU issued its Aid-for-Trade strategy for the region very soon after that meeting as it seemed to have been quite pleased that the region had agreed to conclude the negotiations by the end of 2007⁶⁴⁶.

The Caribbean bargained hard for the Aid package outlined by the European Union, indeed the CARIFORUM States made it very clear to the European Union that without the assurances of the funding they were prepared not to sign the EPA as it would be for too burdensome and beyond their capacity to implement. Therefore the assurances must be forth coming in order to bring the negotiations to a conclusion to the relief of both sides. Between 2002 and 2007 the Regions received £76 million for Regional cooperation under the 9th EDF for capacity building, supporting regional integration, enhancement of competitiveness and to facilitate transition in certain Agricultural Areas to include Banana, Sugar and Rice.

Provisions were made under the 10th EDF for the region to receive €165 million for Regional Integration and the EPA. Provisions are also in place for National Indicative

⁶⁴⁴ Interview- Sam Chandler, Barbados, June. 2009.

⁶⁴⁵ Clement J. Rohee, 'Europe: Friend or Foe?' Op.Cit.

⁶⁴⁶ The council of the European Union 13070/07. Brussels, 11th October 2007.

Program which is tied to the EPA, to include areas such as competitiveness, good governance and public administrative reform and Infrastructural enhancement, in the sum of €454 million or 75% of €600 million up to 2020. A third financial Protocol to go beyond 2013 was proposed. In addition, the European Member States have agreed to commit a share of their Aid for Trade budget which is expected to reach annual amount of €1 billion by 2010, for trade related assistance. CARIFORUM States will share in the 50% which will be allocated to ACP States. The EU has also committed to lobby other donor for support for CARIFORUM Aid support,⁶⁴⁷ of the €165 million was allocated under the 10th EDF to the Caribbean States of €132 million will be used in the CARIFORUM Regional Indicative Programme (CRIP) and €33 million for EPA implementation. However, from the €132 million Regional Governments have agreed to allocate 30% of that sum for the EPA implementation. The total sum for EPA implementation related activities is €72.6 million. There is also a further amount of €2.7 billion in the 10th EDF for all ACP facilities for EPA application⁶⁴⁸.

5.6.3 Negotiating within Time Constraint

Unlike, all pervious negotiations with the EC and ACP States negotiating the EPA had to be completed within the scheduled, because of the WTO waiver. The agreement had to be in place on or before the 31st December 2007; when the waiver granted by the WTO for the Cotonou Agreement in 2007 would expire. Both the ACP and the EU were well aware of the consequences of not meeting the deadline.

The EU wanted to meet the deadline because of two reasons: (1) Its international prestige as a global actor and (2) to have a template to re-start the Doha Round of W.T.O talks. For the CARIFORUM States, what was at stake was mainly (1) their

⁶⁴⁷ The Caribbean council: Fact sheets on the EU-CARIFORUM EPA.
<http://www.caribbean-council.org/documents/factsheetsontheEU-cariforumEPA.pdf> (March 31, 2010).http://ec.europa.eu/development/icenter/repository/scanned_r9CARAI_esp-2007-2013_en.pdf downloaded [March 31, 2010].

⁶⁴⁸ The Caribbean council: Fact sheets on the EU-CARIFORUM EPA.

economic future and stability and (2) strengthening their place in the global political economy⁶⁴⁹ Having agreed to the mid-term review of the Lomé IV convention which precipitated the Cotonou Agreement, meant that these countries were but bound as Member State of the WTO to abide by the rules of the global trade regime in order to maintain credibility.

It is argued that to have agreed to the fragmentation of the ACP into Regional Trade Association (RTA) to negotiate the EPA created a monumental challenge to the lesser partners who had always negotiated with Europe collectively. However, this aspect of the agreement was infused at the insistence of Europe which found it extremely difficult to achieve its objectives at the multilateral level, firmly believed that the way forward to achieve multilateral arrangement for trade regime which reflect European value was to negotiate at two levels to established agreement. Firstly, to negotiate at the multilateral level to set the Global Agenda and secondly to negotiate that said Agenda at the bilateral level through RTA and country to country bilateral agreements.

The timing of the EPA agreement therefore became very important to Europe because for the entire period of the EPA negotiation, the talks at the multilateral level were stalled, indeed negotiation at the regional level for various Free Trade Agreement involving other global competitors were very slow⁶⁵⁰ Therefore the negotiations for the EPA's had taken central stage in Global Trade negotiations. Europe had an opportunity to influence the atmosphere for the resumption of Global Trade talks.

So while at the conclusion of the all ACP State negotiations, the EC was well aware the apart from the CARICOM States, the rest of the ACP configurations neither had the level of regional integration nor did they have for the most part, the financial nor infrastructural capacities to successfully accomplish that task within the time limitations. South Africa had a free trade agreement with the EC negotiated in Indeed, of the entire

⁶⁴⁹ Bernal, Richard "Globalization: Everything But ARMS" Op.Cit. pp27-28.

⁶⁵⁰ Interview- Sir Alister McIntyre Nov.14, 2008. Kinston, Jamaica.

Six ACP regional configuration, only the Caribbean had a stable, albeit weak regional infrastructure to undertake such negotiation. But the regions were caught up into an international trade regime from which they could not resist or refuse to participate. So, what the ACP and EU had set out to achieve collectively, and also for their individual self interest would therefore influence how the negotiations would precede and ultimately impact the deadline.

From the very outset, there was a move on the part of the ACP states to delay the negotiating process. Some State within the ACP, felt that the negotiations presented an opportunity to extract addition Aid Funding from the EU and therefore to “drag” out the process would be a tactical advantage to meet their objective of achieving more Aid from the EU⁶⁵¹.

The CARIFORUM States however did not share those views and saw the process in an entirely different perspective. They viewed these negotiations seriously to protect their interest in the wider Global Trade regime⁶⁵² was severely threatened because; of the six regional configuration only the Caribbean had a majority of non-LCD’s both in numerical and percentage terms within the ACP group. Indeed, Haiti is the only LDC among the fifteen member CARIFORUM configuration. This meant that the EPA would be very challenging but a realistic option for the region and therefore to craft a new agreement which offers better alternative than the GSP and be W.T.O. compatible within the time would be a “win-win” for the region. So at all levels, the region was committed to complete the negotiations within time.

The CARIFORUM States had an early appreciation as to the direction in which the European’s trade and aid policy were pointing and had warned the ACP as to the

⁶⁵¹ Interview – A Caribbean Diplomat, June 2009, Barbados.

⁶⁵² Bernal, Richard: “Globalization: Everything But ALMS” Op.Cit. p. 26.

potential dangers of negotiating separately⁶⁵³. The political pendulum and economic imperative had changed since 1975, and time was of essence for both sides, but for different reasons, and each could not afford to fail in that regard.

The position of Europe in terms of its outlook towards the CARIFORUM Region was aptly put by Baroness Young of the United Kingdom as early as 1996, during the mid-term review of Lomé in a speech given at the University of the West Indies (UWI) in relations to the future of the relationship between both sides she said “It follows that whatever happens after 2000 will have to be negotiated against a back-ground of a changed world in which many EU member States question every aspect of EU development policy, let alone ask why there should be a special relation with a limited group of nations. The message is clear; the scenario will be bleak for any ACP nation unable to adapt to their new reality. These issues are no longer about morality. The conclusion is now almost certainly the defining truth about ACP/EU relations.”⁶⁵⁴

Two years later, the Hon. Owen Arthur, Prime Minister of Barbados, recognizing the direction in which both the EU and the Global imperative were pushing the developing countries of the ACP in defining the level of cooperation between the North and the South, had remarked at the 23rd ACP-EU Council of Ministers meeting in terms “there is clear intention in the draft directives [of the EU] to split the ACP into three or even six parts for the trade negotiations which are to begin in 2000”⁶⁵⁵. He argued that this is “not the regionalization of which the ACP speaks in the Libreville Declaration; indeed it is precisely the opposite. The commission had been repeatedly told of our determination to maintain ACP solidarity and the integrity of the ACP as a negotiating partner. This should be the fundamental basis for the future negotiations. But it will be jeopardized

⁶⁵³ Speech by Honourable P.J. Patterson, Q.C. M.P, Prime Minister of Jamaica to the 17th ACP/EEC Joint Council Meeting, Jamaica Conference Center, Kingston, Jamaica. May 21, 1992.

⁶⁵⁴ Arthur, Owen. “The Economic Partnership Agreement between CARIFORUM and the European Union and the Building of a post-colonial Economy in the Caribbean”. *Journal of Eastern Caribbean Studies*. Vol. 33 No. 2. June 2008. p. 30.

⁶⁵⁵ Ibid. 31.

from the onset were we agree to the negotiating structures that the EU is now contemplating”⁶⁵⁶. He further explained the regions position and said that it is “convinced that the present agreement which exist between 15 European and 71 ACP is worthy of a more enlightened succession in the mutual interest of all other countries concerned”⁶⁵⁷.

Europe seemed well aware that many of the ACP regions were not ready to negotiate, but with support of the Francophone African States in particular and the LDCs which had no real incentives to negotiate an EPA, nor the structures so to do agreed to negotiate separately with Europe, but not only were these countries not possess the capacity to negotiate singularly, their decisions placed grave pressure on the non-LCD’s to negotiate the best agreement they could craft within the limited time.

The compression of time limitation further compounded the options available to the CARIFORUM States because, even though the Cotonou Agreement was signed in 2000, it was held up in a lengthy negotiation process at the WTO. and was only settled at the Ministerial in Qatar in November, 2001. By then almost eighteen months were lost leading into the negotiation for the EPA, because the waiver obtained was scheduled to expire on the 31st December 2007. Phase one of the negotiation; the All ACP launched in September 2002, and ended October 2003 did not achieve much, not merely because of the ACP insistence on getting a binding legal framework but because the EU was not prepared to bind the agreement of that level, because to create a binding framework at that level, would leave the EU very little room to have wheeled their influence on the group of 79.

The All ACP level was not a success from the point of view of the objectives of the ACP States so some groups went into the regional phase disillusioned, confused, ill prepared and indeed time disadvantaged. The EU was not so affected. Therefore, when the

⁶⁵⁶ Ibid.

⁶⁵⁷ Ibid.

CARIFORUM-EU Negotiations were launched both sides were aware of the challenges ahead but the CARIFORUM had more to lose if not completed in time, in short the result would be economically disastrous. The CARIFORUM was not the first to accept Pascal Lamy's offer, but was obliged once another region had accepted. From then onwards the EU was no longer under any real pressure, because the impetus to complete was basically a matter for those who wanted a better deal than what the GSP offered, and therefore had to negotiate to meet the time line. The Caribbean was the only region to have shown the desire and commitment to negotiate a comprehensive agreement because of the calibrations of the ACP group and their various stages of economic and infrastructural development.

Between 2004 and mid 2006, the CARIFORUM lost valuable time because of the way in which the EU was carrying the negotiation, by placing great emphasis on the trade aspect of the arrangement and not focused on the development dimension.

What the EU tried to do was to separate the two dimensions of the negotiation by arguing that the development dimensions were already settled and are provided for in the Cotonou Agreement. The CARIFORUM state took a different view and argued that the Cotonou provisions are wide enough to engage the European's on the question of development Aid, beyond its narrow confines of the EDF and other existing medium.

The Caribbean viewed question of development in a wider context and believed that the EC interpretation of development. The EC took the view that the issue of development was firmly dealt with in the Cotonou agreement. This divergence of views was only narrowed late in 2006; after a relentless campaign by the NGO, and the Caribbean political negotiator Dame Billie Miller of Barbados with support from the British Parliament and the wider ACP group.

In order to move the process along, the EU offered Duty Free Quota Free (DFQF) access for all products exported to the EU from ACP States except for Banana, Rice, Sugar, Rum and boveen meats, but this hardly affected the Caribbean State, most of

which were already benefiting from the Lomé and the Cotonou Agreements for non-reciprocal trade Arrangements, but only to the extent that this offer placed the region on the same footing with the LCD's under EPA initiative. However, the CARIFORUM preferred this offer in a trade Agreement than through the GSP or EBA which was more susceptible to policy changes and the regions global trade. The region felt it better taking the DFQF offer in a binding than under a policy directive which is subject to change.

By the beginning of 2007, it became clear to both sides that time was of great importance if an Agreement is to be reached within the deadline. So while the European rhetoric echoed across ACP, that the European would accept no less than a comprehensive EPA, it was clear to the other five configurations that a comprehensive agreement was not possible, indeed other than the CARIFORUM configuration no other had shown any interest and under mounting pressure from within and external to the EU, the negotiators had to change their stance on pressing for a comprehensive EPA across the wider ACP Group. However, only the CARIFORUM States continued on course to complete. The Caribbean stance caused some disgust among its other now LCD partners, but by then the region had gone too far to retreat. The EU began to press the region to stay on course to complete on time knowing that the Caribbean is among the least valuable in terms of EU exports and sources of its imports and the CARIFORUM Stated needed and agreement and was so committed⁶⁵⁸.

The region felt it had leverage, because the EU would be left without a comprehensive EPA to show after five years of negotiation. This would of course be unprecedented in bilateral trade agreement with a singular block of former colonies and the EU. So as the EU stepped up the pressure for the Caribbean to stay on course to complete a comprehensive agreement, the EU became concerned about emerging opinions that the region should not enter a comprehensive agreement, arguing for the region to sign

⁶⁵⁸ Interview – Henry Gill Barbados, June 10, 2009.

an interim goods only agreement. The EU threatened consequence first, if there was no agreement and secondly expressed its displeasure about “a goods” only agreement with the CARIFORUM states⁶⁵⁹.

As late as September 2007, a mere three months before the deadline in a speech to the European Parliament’s International Trade Committee the Trade Commissioner argued that if the EU and the ACP had “no new trade regime in place by the end of this year the Commission has no legal option but to offer the region concern GSP preference. This deadline is not a bluff or some negotiating tactics invented in Brussels. It is an external reality created in the WTO in Geneva”⁶⁶⁰ He emphasized that the EU is “committed to replace Cotonou trade preference with a new trade Regime that does not discriminate against non-ACP developing countries “and that continued by expressing it must be done by January, 2008”⁶⁶¹.

A powerful signal was sent to the ACP States by Mr. Mandelson when he addressed the International Trade Committee of the European Parliament on the 11th of September 2007. There in his assessment of the state of the negotiation across the entire ACP Regional Configuration beginning with the CARIFORUM states he argued that over two thirds of the text was agreed, but market access was a big problem, he left the door wide open for the CARIFORUM to place their offer when he stated that if the EC “receive the CARIFORUM offer within the next two weeks, then the parties would be able to finish the negotiation on time to meet the entry date of January 1st 2008. But if the parties failed the Caribbean will be “serious difficulty”⁶⁶².

⁶⁵⁹ “ACP Regions Splinter, As EU Turns Up Pressure for EPAs”, *Bridges Weekly*, Volume 11 No. 40. Nov.21, 2007.
<http://ictsd.org/i/news/bridgesweekly/7776/> (December 12, 2009).

⁶⁶⁰ Mandelson urges final push in EPA talks Remarks to the International Trade Committee of the European Parliament Sept.11, 2007. Brussels.

⁶⁶¹ Ibid.

⁶⁶² Ibid.

The Caribbean was therefore placed in a very precipitous but unique situation, while the Pacific's States difficulties were treated as particular, and accordingly the Region's position was emitting "confused and conflicting messages"⁶⁶³ other than Sugar and Fisheries, the Pacific had no real trade interest for Europe, as most of their trade was done with Australia and New Zealand. Africa was of vital interest to Europe and had to be dealt with so much according to the dictate of Europe especially among the none-LDC of the continent of the 47 ACP states in Africa, 33 designated LDCs by Europe at the time the EPA was being negotiated. Therefore only fourteen (14) of the African States⁶⁶⁴ were in the similar position as the CARIFORUM fifteen except Haiti; all of the Pacific States were among the LDCs of the ACP Group of States. LDCs had no real impetus to negotiate on EPA because of the EBA initiative.

Nigeria on the other hand, decided to settle for "a goods" only agreement. By then Europe had given up on any hope of getting a comprehensive deal from neither the African nor the Pacific Forum of ACP states, within less than a month to the Montego Bay meeting held on the 7th of October 2007, the EC had thrown open the door for conciliation to reach an agreement with the Caribbean when Mr. Mandelson reiterate before the European Parliament International Trade committee that although WTO compatible cannot be circumvented "reciprocity will be strongly Asymmetrical, in form of the ACP. It can be flexible enough to allow the ACP to protect their sensitive sectors and it can be phased in over many years"⁶⁶⁵.

In his final charge to the region, the EC trade commission bearded open the EU's case and pleaded for success of the EPA negotiations when in closing the Address to Committee he said "let me be clear in the time we have available the [EU] will do

⁶⁶³ Ibid.

⁶⁶⁴ Botswana, Cameroon, Congo(Brazzaville), Cote d'Ivoire, Gabon, Ghana, Kenya, Mauritius, Nigeria, Senegal, Seychelles, South Africa, Swaziland and Zimbabwe.

⁶⁶⁵ Mandelson urges final push in EPA talks Remarks to the International Trade Committee of the European Parliament Sept.11, 2007. Brussels.

everything [it] can to ensure the ACP regions get the best legally secure EU market accessible... the EPA, remain attainable for every region and [the EU] will continue to work for success.” But, he argued that the EU cannot negotiate with itself and in appealing to the ACP region he expressed the hope that “those in a position to do so will encourage this negotiation to take place in a sensible and responsible way”⁶⁶⁶. This was the most experimental and convincing utterance to have come from the trade commissioner, but he avoided the issue of development supported need to give effect to the EPA, though committing the EU to implement rapidly the legislative and procedural steps to avoid possible WTO challenge. This statement was very encouraging to the CARIFORUM States in light of the outstanding issues and the pending visit to the Region by commissioners Mandelson and Louis Michel DG Trade and Development respectively.

That was the Atmosphere in which the CARIFORUM States were hoping for by the end of the negotiation. The EU had now publicly committed itself to do all it could to assure success in closing the EPA negotiations and have an Agreement in place by Dec. 31st 2007. It was now not just the Caribbean which could not risk failure, both the EU and the CARIFORUM States were vulnerable to the possibility of failure; in light of the least likelihood of an application for an extension of time to complete. By then it was virtually impossible to given the time left to complete and the period necessary for approval of any waiver. In any event the EU would prefer to apply the GSP than to take the humiliating and otherwise very costly step of applying for waiver. The option of a waiver was definitely not on the table; for either side⁶⁶⁷. “Therefore, for the CARIFORUM in particular the necessity for meeting the deadline for the completion of the EPA was pragmatic and did not emanate from pressure from the EC”⁶⁶⁸. Indeed, when the Montego Bay meeting was completed October 4-5th 2007, it was clear that both sides

⁶⁶⁶ Ibid.

⁶⁶⁷ Interview - Henry Gill, Barbados, June 10, 2009.

⁶⁶⁸ Richard Bernal, Grace Kennedy lecture 2008. p. 23.

had made significant breakthrough in many areas⁶⁶⁹. CARICOM had tabled its proposal on market access, but wanted assurances of aid support to secure the viability of the regions sugar industry and also sustain the Banana Industry. The Region also received further guidance on market access and the MFN Arrangements, and the EU laid out its development assistance programs for the region to include Aid for trade and their support⁶⁷⁰. The EC wanted to get an agreement by end of October and pressed the CARIFORUM States, but they resisted, the regions had a lot of concerns, more so because of the EC's unilateral denunciation of the Sugar Protocol. Even then the some Caribbean leaders want to take legal action against the EU⁶⁷¹.

The Head of CARIFORUM State, again meet in Georgetown Guyana on the 7th of Dec. a mere nine days before the agreement was initialled to prepare its final W.T.O compatible offer to the EC; a meeting in which Host President H.E. Bharrat Jagdeo of Guyana was quite pivotal, in his role as host to have the region closed the negotiation on time. Interesting, some of most ardent critics of the CARIFORUM EPA were present and participated, not only at the Prime Ministerial and political levels, but as civil society and academia. So clearance was given by the region to conclude the negotiation. Therefore, Prime Minister Bruce Golding, in his capacity as the chairman of the Prime Ministerial Sub-committee on external trade wrote to the President of the European Commission on the 10th of October, 2007, giving him the assurance that the region will present its final offer by the 31st of December, 2007.

The CARIFORUM States were in a state of cautious optimism as Prime Minister Golding stated in his letter that the region appreciated "...the substantial services offer

⁶⁶⁹ Interview- Sam Chandler, Barbados and Henry Gill, Barbados.

⁶⁷⁰ RNM update 0713, October 11, 2007.

⁶⁷¹ Owen Arthur PM of Barbados & Barras Jagdeo, President of Guyana. See Sir Sanders, Ronald "ACP and EU should seek waiver to complete EPAs", Caribseek, Caribbean News Oct.12, 2007.

made by the European Community and its member State”⁶⁷² and also that “...in order to conclude a service agreement it is critical that the European Union provide market access in a sector that is of fundamental importance to [Region] stakeholder, namely Entertainment and Recreation”⁶⁷³ He pointed to the fact that notwithstanding the special protocol on cultural cooperation imbedded in the text some EC member States were resisting the ‘terms of temporary entry (mode 4) for contractual service suppliers and independent professional in a Entertainment and Recreation, notwithstanding CARIFORUM’s submission of various proposal in this regard” ⁶⁷⁴. He argued that while in other areas of the EPA, service suppliers will need to build capacity over time, in the area of the regions artist and entertainers; the benefit would be immediate increasing “greater trade and economic interaction between the two regions”⁶⁷⁵. The P.M. succinctly place the potential blame if there were to be any failure to complete on time squarely within the area of the EU, within days the response was forth coming on the Caribbean had decided that this proposal was a quid pro quo at the instance of Barbados Prime Minister Owen Arthur.

The EC then made further concessions arising from the CARIFORUM late demands and therefore when the both sides met in Barbados for the final negotiation session, the EC had made all the concessions it could, but the CARIFORUM negotiators need the final positions of all the States through their Heads the MFN treatment was the last issue to be agreed in the early hours of the morning of the 16th December, 2007.

The negotiations were concluded with the concurrence of all the regional leadership on the night of December 16, 2007 in Bridgetown Barbados. The leadership of the region proclaimed that the deal was the best they could have had given the realities of the

⁶⁷² Letter from Prime Minister Golding to the President of the European Commission December, 10, 2007.

⁶⁷³ Ibid.

⁶⁷⁴ Ibid.

⁶⁷⁵ Ibid.

current global political economy and the value of the region in terms of the volume of their contribution to World Trade. The CARIFORUM was the only region to have completed a comprehensive EPA on time.⁶⁷⁶

These CARIFORUM State had an interest in the outcome which went beyond just getting an agreement in place, indeed the region wanted an outcome which would satisfy its constituents, would not be offensive to the solidarity of the wider developing world especially the ACP States and at the same time would not undermine the tenor and spirit of the approach of the developing countries in the multilateral system in light of the Doha Development Agenda and the demands of the and experiences of Seattle and Cancun. But, most of all it wanted to maintain its international credibility.

5.7 The Role of the Caribbean Regional Negotiating Machinery (CRNM)

The CARICOM Regional Negotiating Machinery was established in 1998 by Regional Policy Agreement of the Regional Heads of state. The organization though having no legal status within the Treaty of Chaguaramas Establishing the Caribbean Community (CARICOM), and the Single Market and Economy (CSME), it was the thinking of the Region that it needs to develop specialist negotiating skills and experience because of the technicality involved with negotiating trade in a very hostile global political economy.

But, while the CRNM did not fall within the formal structure of CARICOM Institutions, it was held in place by Policy and Consensus of the Regional Head with the intention that it would become an arm of the Regional Secretariat.⁶⁷⁷ The policy position was that the CRNM would be reporting to the COTED and the COTED would make recommendations to the Heads of Government. The Financial Structure and Regimes

⁶⁷⁶ By 31st December 2007 deadline for the EPAs to be signed. A number of States-including Papua New Guinea, Fiji, Ghana and Cote d'Ivoire-initialled interim EPAs before the deadline. However countries like Senegal refused to sign until development concerns were seriously addressed. In 2008, negotiations had continued As at October 2009. The following was the position with the EPA's across the ACP Region.

⁶⁷⁷ Interview with Dame Billie Miller May 22, 2009 Kingston Jamaica.

for operating the office of the CRNM was not made a part of the CARICOM Secretariat establishment. These two areas were to become a major source of regional politicking for “turf” within the rank of both the Secretariat and CRNM⁶⁷⁸.

This was so because these were direct channels of communication opened to the first Head⁶⁷⁹ of the CRNM because of his status and personal interaction and exposure to all the Regional Heads which was viewed as an affront to the Trade Ministers in the COTED to whom the CRNM should report, and secondly the question of remuneration between the two organization were of major concerns. The extent to which the EPA was Negotiations were conducted along ethical traditions had become a matter for great public debate and the Caribbean Regional Negotiating Machinery was in charge of developing policy positions for negotiation and to coordinate the negotiating processes.

However the real problem did not rest with the CRNM, but indeed the Political Directorate. The CRNM did carry out its mandate and widen the consultative process, however when it submitted its reports and findings, these were either not read or the technical teams failed to communicate what they had observed in any structured way to their constituents. There seems to have been a clear failure of the political directorate to communicate to the people of the Commonwealth Caribbean, the institutions of Caricom and the CRNM. This failure was laid at the heart of the public criticisms of the agreement which almost derailed its signing⁶⁸⁰.

The Caribbean Community was established in 1973 by The Treaty of Chaguaramas and the Conference of the Heads of Government is the highest political Authority and the Secretariat is located in Georgetown, Guyana. The CARICOM Head establish the Caribbean Regional Machinery to take charge of and lead the processes of developing

⁶⁷⁸ Interview- a Representative of the CRNM.

⁶⁷⁹ Interview- Dame Billie Miller, May 22, 2009. Kingston, Jamaica.

⁶⁸⁰ Interview- Ricky Singh June 22, 2009. Barbados.

external trade strategies, coordination and execute the external trade negotiations on behalf of the region. Established in February, 1997⁶⁸¹, the organization was never meant to nor designed to function as a supra-national Institutions. It existed independently of the CARICOM formal institutions under the treaty and it has only been placed under the CARICOM Secretariat as a specialized unit in 2009.

The organization from its inception had reported directly to the regions political heads and the Prime Ministerial Sub Committee (PMSC), but could only do so through the formal organs of the CARICOM arrangement; of which it was not a part of, ⁶⁸² by policy directives, it also reported to the COTED but not to the Secretary-General of CARICOM. This factor became a source of disquiet in some areas of the formal Institutions. So also was its level of autonomy in managing its own affairs and seeking funding for projects it wish to undertake. At the launch of the CARIFORUM EPA, this organization was unique⁶⁸³, because of its authority to oversee the external trade negotiations on behalf of the region, although it operated only on the basis of a policy decision of the regional heads and with-out formal legitimacy under in the Legal order of the CARICOM establishment. It also had no status within the ACP regime and formal Institutions⁶⁸⁴ neither was it recognized in the W.T.O formal regime⁶⁸⁵, but that notwithstanding it was allowed to participate in all the trade for a in which the Caribbean is active.

⁶⁸¹ The RNM was established through two-sub Prime Ministerial committees the PMSC and Bureau which forwarded their proposals to the Heads of Gov. at their Inter sessional meeting in February 1997 which they were adopted.

⁶⁸² Cedric Grant. "An experiment in Supra-national Governance: The Caribbean Regional Negotiation machinery.

⁶⁸³ San Biler Op.Cit.

⁶⁸⁴ Ibid p. 50.

⁶⁸⁵ Ibid p.53.

5.8 The CARIFORUM's EPA Mandate

Having commenced the Negotiation for the FTAA, the RNM had developed competencies in negotiating Free Trade Agreement for which a mandate had to be given by the Heads of Government of the CARIFORUM States. The CRNM had problem in shaping the mandate for the All-ACP for the EPA, because the organization was not reorganized by the ACP-Forum Structure⁶⁸⁶ which for the purposes of Negotiations with the EU, only the Committee of Ambassador were empowered to negotiate and the Council of Ministers issue directive and provide political guidance.

The difficult task of managing the negotiation process from development of the mandate to the actual initialling of the Agreement was a historic process of the dynamism of Caribbean regional ability to have joint action but preserve sovereignty. The CRNM was therefore responsible for removing the ad hoc methods of trade negotiations and regional decision and to develop trade strategies and policy coherently and to oversee all external trade negotiation processes.

The question of the efficacy and ethical conduct of the negotiations for the EPA find its resolved in the various mix and ebb and flow of the decision making processes, agenda setting and final outcome of the negotiation to include formulation of negotiating position, the directives of the `political head and to address the extent of the Gaps and disconnection in the process from formulation to execution on the mechanism to facilitate those processes.

5.9 EU's strategies and the CARIFORUM response

By introducing the Aid for Trade and the Doha Development Agenda at the Doha ministerial, November 2001, and also the "everything but Arms" (EBA) Initiative which precede that meeting, the EU had intended to influence the ACP Partners and other developing countries into supporting the new round of negotiation. The EU tried

⁶⁸⁶ Cedric Grant Op.Cit. p.47.

unsuccessfully to get the multilateral trade talks started; having been stalled for months took the opportunity presented by the EPA negotiations to get some trade discussions moving. Indeed, the FTAA was also stalled, so the EPA negotiations were the only trade discussions which were in progress.

So having rejected the ACP's proposal for a joint ACP-EU steering committee on the WTO Negotiation, the EU was expecting, notwithstanding, that the ACP would have supported their agenda at the multilateral level on the basis of the Development agenda which should benefit the ACP States. This expectation was not fulfilled, indeed the EU was left quite exposed that it had to make a last ditch effort to savage the Cancun Ministerial. In the end the ACP States would not give its support until the interests of the developing South were addressed. To this position they held steadfast. The developing countries position was summed up by the Belizean Minister when he stated in the aftermath of Cancun that "no deal is better than a bad deal."⁶⁸⁷

The efforts to negotiate on the Singapore issues were sternly resisted by the more influential Developing countries of Brazil, and India, Malaysia and Pakistan, but got support from other third world countries, which the EU and Japan were the main proponents. A Group of Developing country had long expressed their opposition to negotiating these issues at the multilateral level, but were pressing their case for special and differential treatment for developing countries especially the LDC's.

The leadership role played by Brazil, China and, India in the emergence of the group of 22 and the determination of the ACP/LDC, the African Union and the alliance of the small economies were very pivotal to the outcome of the Cancun Ministerial. The EU had to take stock of its position in the multilateral negotiations in light of the divergences between itself and the US on Agricultural Subsidies. The US had to begin focusing on bilateral and RTA to effectively re-engage at the multilateral level, but this could only

⁶⁸⁷ Richard L. Bernal "The Doha Development Agenda after Cancun: An insider view presentation at the second CEPIL-IDB Conference "Economic Implications of the Doha Development Agenda for Latin America and the Caribbean." Inter American Development Bank Washington DC.

take shape after the Presidential Elections of 2004. However, the EU had an advantage in time and clientele over the US as it was already in the midst of negotiation with 79 of the World's Developing countries of the South to craft a free Trade Agreement compatible with the Rules of the WTO to replace the non-reciprocal Trade arrangement under the Cotonou Agreements.

The CARIFORUM States recognized the opportunity to engage the EU, because the EU itself wanted a partner to make the break-through to re-engage at the multilateral level. By then it was quite clear to the CARIFORUM States that the FTAA negotiation were at standstill and was basically laid to rest by the Bush Administration and therefore the EPA negotiation had to take center stage .

How the CARIFORUM and the EU managed the negotiation to craft a comprehensive EPA was a testament of their creative skills and diplomatic manoeuvring in opening up markets while protecting vital interests on both sides. It was an exercise of economic state craft of enormous proportions and unprecedented in the CARIFORUM regional history of trade negotiations as none of the opposing party wanted to fail, but for each to meet their objectives of gaining as much and conceding as little as possible. The question of moral fortitude not being a relevant issue, as the EU took a Machiavellian approach in pursuing their mercantilist trade policy as a Global player at all cost⁶⁸⁸. The CARIFORUM States though small and vulnerable were not prepared to "give-in" without extracting as much as it could from the EC. The role of the CRNM in this regard was very testing, but for the region, Europe had understood that what they were negotiating was free trade with development dimension, not a non-reciprocal agreement with aid support⁶⁸⁹.

⁶⁸⁸ Katharina Anna Serrano "Economic Partnership Agreement: Machiavellian Instruments of EU trade policy or Samaritan development tools? *International Journal of Private Law* 2009. Vol. 2 No. 3 p. 290.

⁶⁸⁹ Interview- Sam Chandler, Barbados, June 10, 2009.

5.10 Sources of funding for EPA negotiation

From its very inception, the first head of the CRNM, Sir Shirdath was quite emphatic in maintaining that the primary responsibility for financing the RNM should be that of the member States of CARICOM, but that the business community should also be called upon to assist⁶⁹⁰. It is without doubt therefore that even though Regional Government supported the CRNM Budget, international Institution and bilateral donor's have significantly support the funding of the CRNM's work.

Realizing the severe difficulties in designing donor programs in order to assist trade negotiation, the CRNM was very clinical in its reliance and use of external support, knowing very well possibilities of donor bias. Therefore while it welcomes donor assistance, it aimed to achieve maximum benefit by involving its permanent staff to a large degree in preparation of discussion papers than upon short-term employees and consultants and external expertise.⁶⁹¹

The EU and Member States provided financial support to the CRNM, but it was the CRNM in the main which selected the expertise to provide the services it need. So even though as a matter of principle accepting financial and technical assistance from those parties on the other side of the negotiating process is dangerous and possible very compromising and not to be avoided, the reality is that the CARIFORUM States through the CRNM had very little choice but to accept the assistance, but had to be determined to walk away from an offer of assistance when it does not meet the region's expectation⁶⁹².

The EU's privileged position as a donor created a kind of paradox which the Caribbean was determined to minimize and to a large extent reconcile in the negotiation process in

⁶⁹⁰ Cedric Grant Op.Cit. p. 36.

⁶⁹¹ Interview– Henry Gill, Barbados June...2009.

⁶⁹² Ibid.

its attempt to secure an equal and balanced agreement because as the EU attempted to exert its influence as a provider of resources the CARIFORUM States made it very clear that what they were negotiating was a Free Trade agreement and not a non-reciprocal Trade arrangement and they were not prepared to negotiate out of fear or on bending knees with Cap in hand⁶⁹³. So, while the CARIFORUM States accepted the EU's support in financing negotiators attendance at negotiating meetings and for national and regional consultation, the region was equally conscious of the need to resist any EU's attempt to use such offers as potential sources to influence the outcome of the negotiations, or consultations.

The CRNM took charge and directed its activities consciously independent of donor's bias in the dynamics of the negotiation process. For example the EU having done its research in tax governance and demanded to negotiate a tax governance regime to which the region flatly rejected⁶⁹⁴.

The CARIFORUM States had to use their opening and offers to foster and facilitate its own agenda and trade strategies, fully cognizant that what was agreed though subject to review in the future, was in fact a onetime negotiation arrangement which will impact the future of its trading relations not only with Europe but North America, and indeed the global political economy. It therefore could not allow itself to be left exposed on the altar of expediency and donor handout.

⁶⁹³ Interview- Sam Chandler. Barbados. June. 2009.

⁶⁹⁴ Bernal, Richard. "Globalization: Everything But Arms" Op.Cit. p. 28.

5.11 EC threatened CARIFORUM States

It is a commonly held view that the EU uses its own tactics to get the Caribbean to initial the agreement before 31st Dec. 2007 and also in getting them to sign.

It is widely believed that the EU's threat of imposing GSP or higher tariff to force the CARIFORUM States to initial the Agreement; and after the Agreement was initialled it wanted the signing to be done as quickly as possible to avoid any embarrassment.

The first secretary of the European commission in Jamaica had stated publicly⁶⁹⁵ that the preferential treatment offered to Caribbean Countries would expire on the 31st Dec. 2008. This was later denied by the EC, which stated that the Council Regulation 1528/2007 OJL348.31.12.2007 has no expiry date and only the council can repeal it.⁶⁹⁶

While CARICOM Heads struggled to come to a consensus to sign the EPA a special summit meeting was called in Barbados in Sept. 2008, to agree on appropriate date for signing with the EC pressing the CARIFORUM States to sign.

By then Guyana which had refused to sign had a national consultation prior to signing a "consensus statement" was issued following the meetings of stakeholders in time for the Barbados meeting which would take the decisions to sign. The mandate was for Guyana to sign a "goods only" agreement and await a further review of the EPA. Guyana action threatened the unity of the CARICOM States but it was prepared to sign a goods only agreement, by itself which the rest could sign a comprehensive agreement.

The Barbados Minister of Foreign Affairs and Foreign Trade Chris Sinkler, was not phased with the stance of Guyana and commented that it was "passing strange" that having mandated the CRNM to complete the negotiation for full EPA it now raising

⁶⁹⁵ See Gleaner 29th August 2008.

⁶⁹⁶ Sir Ronald Saunders "Europe's ploy to secure EPA signing coming to light" Caribbean 360. com October 3, 2008.

criticisms it".⁶⁹⁷ However, even the Barbadian Foreign Minister seemed to have been speaking in a manner which amounted to 'double talk', because he was a leading critic of the EPA, while he was an opposition spokesperson and a member of a Caribbean based N.G.O, which were very vocal against the EPA, but as soon as he became the Minister of Foreign Affairs and Foreign Trade following the election in Barbados January 2008, he embraced the EPA seemingly wholeheartedly..

In 2005, when he took office Mandelson had given assurance that the benefits under the Sugar protocol would be safeguarded in the EPA but late he reneged on those assurance and on the 4th April 2007, he made the EU's market access offer; which provide duty free quota free export to All ACP States except South Africa and that the Sugar protocol be effectively be replaced by Sept. 2009. Without granting the ACP an opportunity of a joint review as required under Cotonou and at the same time Mandelson and the Commission applied pressure on the 17 ACP Sugar protocol States to mutually consent to the denunciation. Not only that the commission denounced the Agreement, it pressured the sugar protocol states to accept the minimum price paid by EU importers.⁶⁹⁸

The Guyana stakeholders had rejected the EPA arguing that it undermined the C.S.M.E and they were opposed to the including of the Singapore Issues at their consultation on the 5th September 2008, they mandate president Jagdeo to advise CARICOM Heads at their forth coming meeting in Barbados September 10th, that Guyana would only sign a goods only agreement. They urged President Jagdeo to send a delegation to the ACP meeting in Ghana October 2-3, 2008 and expressed alarm at the CARIFORUM signing and agreement on the eve of the Ghana meeting.

⁶⁹⁷ Ricky Singh "EPA nightmare" Jamaica observer Sept. 8, 2008.

⁶⁹⁸ Phil Pascal. "EU's "About-Face" on sugar protocol. A betrayal for ACP producers. Guyana Chronicle, July 16, 2007.

The group felt that EU was exerting pressure and threats and persons at the meeting were visibly offended when Karl Falkenberg of the EU indicated that he expected Guyana and the rest of the Caribbean Governments to sign the agreement without further discussion.⁶⁹⁹

Ms. Gleny's Kinnock, Labour M.P. for Wales. E. Parliament member argued that strict sanitary and phytosanitary rules in Europe could, may cause problems for ACP exporters and put them at a disadvantage.⁷⁰⁰ "The negotiations were conducted in a positive and cooperative spirit"⁷⁰¹ The EC rejected the suggestion that CARIFORUM were forced into the Agreement.⁷⁰²

The Caribbean wanted an Agreement so was the EU. But as the time was running out the parties were deadlock in Nov-Dec. 2007, the first deadlock developed over Sugar, the second deadlock was caused by France refusing to allow Regional entertainers to work in Europe, but the area was very important to CARIFORUM. The Barbadian P.M Owen Arthur insisted that the Region was "prepared to draw a line in the sand" and walk away without an agreement in cultural workers were not allowed free entry into Europe, only Austria and Germany has placed restriction.⁷⁰³ Louis Michel and Peter Mandelson described the deal as "an innovation and ambitious package"⁷⁰⁴

⁶⁹⁹ Stakeholder's consensus statement. 5th Sept. 2008. Georgetown, Guyana.

⁷⁰⁰ Sankey, Pete. *EC rejects view CARIFORUM forced into EPA*. [Jamaica Observer](#) (April 28, 2008).

⁷⁰¹ Interview- Americo Belriglia Zamfitti. EU Headquarters, Brussels, May 5, 2009.

⁷⁰² Ibid.

⁷⁰³ Williamson, Bert: Caribbean/EU: Pact sets timeline for Trade liberalization. Global information network. New York Dec. 24, 2007 p.1.

⁷⁰⁴ Jessop, David. "All or nothing the Caribbean EPA" *Trade Negotiations Insight*. Vol.6. No. (8 Dec. 2007 and Jan. 2008) p.14.

At this meeting in Guyana on the 7th December, 2007, the CARICOM Heads of Government in an effort to avoid confrontation with Europe in light of the possibility of being slapped with higher tariffs or GSP, to protect sugar, banana, low priced rum and rice being subject to tariff, the region yield to Europe's demand on liberalization of over 80% of substantially all trade; and agreed to continue negotiation on the 14th December to conclude agreement.⁷⁰⁵ While the region could have signed off them, if sought to continue on Dec. 14th to use the time as leverage to secure further improvement on the development dimension.⁷⁰⁶ The CARIFORUM had resolved all the outstanding issues at the Guyana meeting on the 7th, but were very adamant about the question of cultural workers entering Europe to work freely.⁷⁰⁷

From time to time the EU was at odds with the EC on several issues. For example, so strong were they on opening up ACP market and intellectual property protection that the European Parliament had to urge caution to the EC, and demanded that the EC refrained from making excessive demands on ACP, and requested that provision be made for them to protect local industries from surges in EU imports more particularly for farm products.⁷⁰⁸

Brazil and India had objection to the MFN Clause in the EPA; Brazil in a settlement issued through its representative in Guyana, at the General Council meeting on the 5th Feb. 2008, arguing that the M.F.N clause in the EPA's are restrictive of developing

⁷⁰⁵ Ibid.

⁷⁰⁶ Ibid.

⁷⁰⁷ Issues resolved: (1) Setting a formulation to achieve intra-CARIFORUM cumulation (2) wanted a quota for sugar to be above 30, 000 tonnes (3) Retain safeguard cause against French OCTS. (4) secure a change in the percentage for calculating banana export tonnage (5) obtain greater clarity on funding and source of funds for EPA implementation and (6) gain concession on mode 4 for Entertainers and Cultural workers.

⁷⁰⁸ EU, ACP determines to meet end-of-year deadline for EPAs. ICTSD *Bridges weekly trade News Digest* Vol.11. no. 20 6th June 2007.

countries in entering into meaningful trade arrangement with countries of the South as it place restrictions on access to the market by other non ACP developing countries.⁷⁰⁹

The EU had been pressing for urgent implementation of the provisions of the CARIFORUM EPA, soon after it was signed seemingly unconcern about the views of the CARICOM countries more so the LDCs of the Region.

In a statement issued by Dr. Mareika Meyn, the EC was urged to reduce the pressure being exerted but the EC arguing that “Given the complexity of the agreement and the lack of time, countries have had to reflect on its implication it is recommended that the EU exercise due restraint in enforcing its provisions” and hinted that if further analysis shows that post-signature revision is desirable this should be made possible”⁷¹⁰.

5.12 Conclusions

The CARIFORUM States entered the negotiation very clear as to what they wanted to achieve and the kind of concession were wanted to make to secure the deal and also, where they were not prepared to concede. This strategy was offensive and defensive in this regard. Their advantage was the asymmetries which they exploit and used the negotiating structure to open up the EU’s stance and achieve their regions objectives.

The structure and processes of the negotiations had advantages for the region, though these were very complex in nature and operationally. The consultation process which was executed through the Technical Working Group (TWG) which met before and after each session had served a useful purpose. The National consultation however, was less effective and involved in some territories. Indeed the consultation in some States

⁷⁰⁹ Statement by Brazil made to the General Council meeting of the W.T.O. 5th Feb. 2008.

⁷¹⁰ Statement by Dr. Mareika Meyn at the hearing at the European Parliament on 4th Dec. 2008 on the Economic Partnership Agreement EU CARIFORUM.

were poorly attended. However the CRNM was never daunted by the extent of its task to negotiate an Agreement of such magnitude within the limited time and with such a formidable opposition. The outcome of the negotiation can only be expressed or benchmarked in terms of what the region had achieved in light of its stated goal; in order to determine how ethical the process had been.

The Caribbean in negotiating this EPA had maintained the highest ethical standards in keeping with the expectation of its domestic, regional and International Reputation.⁷¹¹ It had set out to achieve the following: retain preferential accesses and minimal preference erosion, to protect the interest of its LDC's under the regional umbrella, maximize market access to the EU market and to improve access in term of service in the European market to impact immediate returns, promote inward investments which are environmentally friendly and to improve the region's competitiveness and impact economic diversification of the regional economies through investment and innovations. It was also mandated to protect small and Medium size enterprises (SMEs) engaged in the domestic markets of the region, promote regional integration, economic cooperation and good governance and to craft an agreement which was development friendly to the region and finally to secure additional funding outside of the EDF for EPA related implementation, capacity building and integration support. All these objectives were met in varying degrees notwithstanding the uneven Economic Status between both sides in terms of resources in the areas of Human, technical and financial. The Caribbean had clear and definite positions as to why it needed to get an agreement within the time. In the main the region was motivated to negotiate and complete an agreement before the expiration date to avoid disruption of the Regions export to the European Union (EU) as a number of products would be subject to tariff come the 1st January 2008. So also, having settled the negotiations on trade in services, it became clear that if the region could secure an agreement on market access for good even at the very late stages of the negotiation, then it was possible to sign a comprehensive agreement.

⁷¹¹ Interview - A. Zampetti. May 5, 2007. Brussels.

The region saw the EPA as a unique package of Trade arrangement complemented by a development cooperation dimension and therefore to separate trade in goods, trade in services and trade related issues would not be to their advantage and diminish the regions ability to leverage in one area to gain in another in which it had a more offensive interest. But the region wanted to maintain its integrity and avoid fragmentation which could create a situation where the EU may be inclined to negotiate separate bilateral or sub regional Trade and Development agreement. It is within this context that the Ethical dimensions of the negotiations are highlighted on the part of the CRNM in coordinating the negotiation processes so as to facilitate the CARIFORUM States to maintain its core principles while achieving its objectives in keeping with its mandate.

CONCLUSIONS

Although the Yaoundé Conventions and the Lomé allowed the former European colonies in Africa Caribbean and Pacific regions to benefit from preferential one way non reciprocity trade with a cooperation component this was never meant to last forever. These arrangements were a mere ‘pause” in time to stave the threats posed to the global North which needed assurances for raw material from the South to keep their industries going and the South felt that the development was one way and they were not benefiting. The political thinkers of the global South along with the intellectual support of radical economic and development thinkers began to reject the traditional and well settled thinking of the global North and challenged the orthodoxy and status quo. The call for a New International Economic Order (NIEO) found favour with developing world development Strategy and the movement to create that order got the full backing of the Group of 77 of which the Caribbean played a lead role in the 1970s. The Caribbean sought to place the Lomé negotiation in the wider context of the global objectives of the developing world for a new trade and financial arrangements.

However, the break-through of Lomé was lost as shortly after the agreement was entered world economic crises ensued which engulfed the ACP States which became deeply indebted and turned to the multilateral institutions for assistance. From that, they never fully recovered as conditionalities imposed by these institutions paved the way for Europe to slowly reinstitute the reciprocity in trade arrangements that they have always craved. Cotonou was therefore the vehicle which provided smooth passage to the desires of the multilateral system.

In the 1980s, as the global crisis compounded the ACP’s financial constraints, the IMF, World Bank and the EU institutions consolidated their positions and imposed conditions of market reforms, adjustments in financial management of national resources coupled with adjustments in tariffs rates all of which contributed to the decline in the fortunes of the ACP State. Lack of investments in the national economies of the ACP State in general, both from local savings and FDI , declined in export earning from commodities,

coupled with world inflation due to the shocks of oil price movements in the late 1970's further affected the ability of the ACP States to take advantage of the potentials of the Lomé system. Foreign Direct Investment flowed rapidly to the Asian Tigers at a rate which later led to a collapse in their financial system and the ACP States further suffered from that fall out as the global financial system adjusted and international financial capital became very expensive.

Due to the world crisis of the 1970's and 1980's, the ACP were never able to develop their "Flag Ship" strategy to align the South into a position to compete with the North, over time in terms of industrialization. This was a design and objective of the New International Economic Order being pursued by the Group of 77 Developing Countries. It was the intention of the Developing Countries to establish its own financial institutions and regimes to foster development and move away from being suppliers of raw material to the North and importers of finished products from the North. Their inability to establish the financial regimes as a basic foundation to finance development and industrialization was a major failure and disappointment of the Group of 77⁷¹².

However, Europe cannot be blamed for taking steps to protect its vital interest and promote its global policies. Indeed, they are duty bound so to do. Because, during the Uruguay Round the ACP States failed to agitate to protect their interests and allowed the economic powers a free reign to set the rules of global trade. Those States had the numbers to make a difference at the multilateral level in the Uruguay Round, but failed to use it, indeed they allowed themselves to be marginalised. They could not expect that Europe would jeopardise its interests to protect the ACP States in light of the global threats from Europe's main trading partners and emerging markets.

The demise of the Lomé and Cotonou regimes was long in coming and its credibility as a way forward for developing countries was not even being supported by the European which granted it in the first instance.

⁷¹² Interview P.J Patterson, March, 3, 2009. Kingston Jamaica.

It is therefore argued that the basis of Lomé was indeed a response to the frustration faced in UNCTAD by ACP states which seem to have had political “clout” but no real economic power. A factor that they have failed to apply in the Uruguay Round. This, coupled with the fear of Soviet influence of the 1970’s and the threat of Commodity cartels made it imperative for the North to seize the opportunity to open up a different type of relationships with their former colonial territories at a time when the North had had no real answer to the urgency of an evolving political militancy of the developing world in search for economic reforms of the global trade arrangements and therefore found it convenient to negotiate than to confront.

The constant whittling away of the ACP States when they signed Lomé I coupled with the level of economic decline in almost all of the economies of the ACP countries points to the marginalization of the importance of ACP in the context of global political economy. The marginalized institutional framework and cooperation apparatus of the ACP-EC has been used by the EU to provide support for its global profile of the institutional importance in the global political economy. So therefore, as the EU grew in strength and importance globally Lomé and the ACP have become less and less important to the EC. It is without doubt that there was a need to better administer the aid aspect of the Lomé Agreement. However, the conflicts of economic and moral interest which occupies the national interest of some European states seemed to have overflowed into their eagerness to enforce sanction against states of the ACP or regimes deemed guilty of human rights violation are more easily accommodated in multilateral or bilateral agreements and so the Lomé became a convenient instrument of European political interest in human rights issue. It is therefore not surprising that the EU took control of the implementation of its aid projects in ACP states, contrary to the spirit and intent of the Lomé Conventions.

The political dynamism of the Lomé regime lost its impetus with the fall of the Soviets system as many ACP State could no longer be allowed to conduct their affairs in any manner inconsistent with the political agenda of the EU. The EU’s policy on political

governance was outline in the Green Paper published in 1997, which further opened up the avenues for the reconfiguration of the ACP States in the relations to the EU.

The negotiations of the Lomé Agreements since 1975 has exposed the weaknesses and the strengths in the trade and diplomatic strategies of both the ACP states and the EC and therefore the institution cannot be seen as a total failure but a fault of the will of each side to advance their interest in a very hostile global economy. Since the negotiations of the second Lomé, the ACP States were showing signs of weakness which the EC found as avenue to pull back on some of its commitments, or to re-order their implementation. The EC's approach to the partnership followed those lines up until the negotiations of the Economic Partnership Agreements. However, the CARIFORUM State felt that it has to make a signal change to the EU's basic approach to the negotiation of the Trade Agreements as the EPA was not of the same character as the Lomé regime.

The EPA negotiations with the Cotonou states and the EU were launched on the 27th September 2002 to define a new set of arrangements and focus on WTO compatibility the substratum of which is to achieve removing of the barriers to trade and enhance cooperation in trade related areas to impact growth and deal with the new development objectives of Cotonou.

The Cariforum states entered the negotiation for a new EPA with the EU to replace the Cotonou Agreement signed in 2000 and for the new arrangement which came into effect on the 1st January 2008, while the aid aspect of Cotonou will continue separately until 2020. The Agreement was signed on the 16th of October, 2008 in Bridgetown, on the Caribbean island of Barbados.

The EPA was never requested by the ACP States, they resisted but Europe and the WTO wanted reciprocity and the ACP had to give in. Europe had changed since 1975 so, has been the relationship between the two sides. Many of the more recent Member understanding or sympathies. But the Caribbean knew the issues at hand and the

monumental task of negotiating with Europe; but was equal to the task. The Caribbean knew that their strength States of the EU had no affiliation with the Caribbean and therefore no colonial was in unity and the value of being small Island State and the effect of appealing to the emotions and conscience; and they use this combination to gain advantage.

Europe had made a decision in the context in the dynamism of negotiation at the WTO that the non-reciprocal trade arrangement had to be discontinued. CARIFORUM State accepted the realities. So in negotiating the EPA the question had to be answered as to how the region would negotiate a deal with Europe for itself in the context of the new and emerging trends of world trading arrangements. The issues to be negotiated were formidable, and in some areas were never negotiated in a free trade agreement before. The Region realized however, that to maximize their position of weakness as offensive and defensive approach to those negotiations were appropriate strategies.

The region did its research and drew upon its knowledge of the EU, based on the longstanding relationship and was well prepared to negotiate with Europe.

In the negotiation, the Caribbean knew that Europe, though the economically and politically they were stronger partners, CARIFORUM was not prepared to be dictated to by Europe and so when Europe tried to push its brand of development and the types of regional economic arrangement that should be put in place under the EPA, the Region resisted.

At the all ACP level the EU's stance seemed to have frustrated the ACP's strategy for the regional negotiation. The EU's strategy succeeded because the ACP States had become fragmented and the unity had waned over the years. The EU's well used strategy of "divide and rule" had succeeded at the all ACP level, but the Caribbean was determined not to allow it to succeed in the regional negotiation for the EPA.

The region spoke with one voice through the regional negotiating machinery with the full authority and support of the political directorate at the ministerial and the Heads of Government levels.

The regional had its own policies for development clearly defined and a philosophy for its own development and was not prepared for it to be replaced by European understanding of development. The Caribbean had to draw on the lessons of the Uruguay Round and the experiences of negotiating the FTAA to inform its approach to negotiating the EPA.

From as early as 2003 when Pascal Lamy made an offer that Europe was willing to commence negotiation with the Region that it's ready to negotiation even before the All ACP level was concluded, suggests that the Europeans had no interest in a successful conclusion of all ACP talks. CARIFORUM also recognized that when the Central and Southern African configuration accepted the offer made by Lamy that the ACP was fractured and the Caribbean had to go it alone

The Caribbean knew that they were more prepared than any other configuration but did not take up the EU's offer, but would not take the EU's offer and therefore waited to see the response of the others. At that time, the regional knew that with the stalling of the Doha round and the problems at the multilateral level, the EU wanted some success especially on the so called "Singapore issue", more so in light of the Seattle and Cancun experience. Europe wanted to get those issues restarted and to that extent the Caribbean would be prepared to negotiate with them meant that global Europe would get some momentum.

The Caribbean also appreciated the importance of those issues to the European Global trade strategy and sought to capitalize on that. The Caribbean realizing that the EU mandate issued in 2002, placed some emphasis on trade in service and the trade related issues, so also that the EU's mandate once given is very inflexible and difficult to

change; or renegotiate. The Region was prepared to use that inflexibility to its advantage instead of trying to get it to be more flexible.

And so, when the European's responded to issues rose by the Caribbean and argued that they had no mandate to negotiate, CARIFORUM appealed to the emotional sensitivities of Europe by going to the political directorate to get answers.

The regions knew the historical tradition of Europe democracy and used the network of N.G.O. to its advantage, the press and media was a medium which the region used to get its way in the various European Capitals.

The CARIFORUM States wanted to negotiate a free trade agreement with Europe and were aware of the implication and what it would take to implement the agreement and were determined not to be draw into the free trade arrangements with Europe without the assurance of the concomitant development support to succeed in the new arrangements. Europe had a need also to promote Global Europe.

Caribbean during the negotiations relied upon the influence of the European Parliament to get concession by appealing to them through the ACP-EU joint Parliamentary assemble. The region's decision to take the initiative and created the opportunity for its chief spokesperson Dame Billie Miller to address the meeting of the Joint ACP-EU Parliamentary Assembly in Vienna in June 2006, still remains as one of the most masterful piece of diplomatic feat carried out by the ACP and particularly the CARIFORUM State during the EPA negotiations. That was the opportunity which created the breakthrough which ended Peter Mandelson's "divide and rule "double taking approach to the negotiation. That change in attitude towards the negotiation and the CARIFORUM regions augured well for the ACP as a whole, up to the end of the negotiation as Mr. Mandelson was kept in check by the European Parliamentarians and the European press to a large extent. Because while the mandate to negotiate the EPA was specific, it did not speak to the manner of how the negotiations should be

conducted in terms of tactic, strategies nor personalities, nor the issues for the negotiations and the D.Gs involved.

When Mandelson took over as Commissioner for trade he sought to find his “footing” among the Region and in doing so, had made several speeches outlining his intentions. The CARIFORUM used those utterances of policies and directions to extract concession in the end and forced an end to his public and private posturing regarding the EPA. The CARIFORUM State was prepared to take the issues which concerned them to the international level through the Group of 77 and effectively stalled the Cancun Ministerial of the WTO. Europe had to take the Caribbean quite serious, because of the potential of the region to upset the global agenda of Europe if the negotiations were to have failed.

There were no specific areas in which the EU did not compromise, their main concern was to get a degree of liberalization of 90% or above but, settled for 85%. When the EU tried to get CAFTA parity from the Dominican Republic (DR) they settled for an undertaking for future arrangement. When they sought to get the Caribbean States give 90% liberalization, the Regions offered the defence of “Variable Geometry” and the existence of its own internal market arrangement. The liberalization formula was only achieved through regional solidarity and unity. Because, it was the offer made by the Dominican Republic to the other States which brought the region’s offer up to WTO compatible level. The fact is no other country in the Region could have done what the DR did without suffering severe economic injury and loss of revenue.

What was made clear to the Europeans by the CARIFORUM States is that as a Region they were not prepared to go to Europe with “Cap in hand “as the basis of the negotiating strategy. The region knew the age-old strategy of the European to hold the question of funding as a matter for discussion towards the end of the negotiation, where can be used more effectively to extract concessions. But the Region was well aware that this negotiation was not in the same realities as the old Lomé’ type agreements.

The EPA is a free trade agreement which was demanded and had to be negotiated in a very serious way and therefore the CARIFORUM States wanted guarantees of development assistance, not in the form of hand out Aid packages, but as an integral part of process to move the Region to grow itself out of poverty and take its pride of place in the Global trading arena and other forum.

So when the EU pressed on the issues of Intellectual Property, the Caribbean put the issue of Innovation on the table. This was a Caribbean concept, so innovative and carefully presented and analyzed; that in as much as the European negotiators said they had no mandate to negotiate it, left the European's with no room to reject it.

The Caribbean came under pressure from the applications of the European Union Common Agricultural Policy and the reform of their internal market. The Regions banana, sugar and rum industries were being affected by the approach to the reforms. Europe however, refused to engage the region in any meaningful discussion, but the region would not give in easily, and use every opportunity during the negotiations to convey a sense of European "betrayal" of their historic and legal commitment to the ACP partners.

The EU's unilateral denunciation of the Sugar Protocol which had been in place since 1975, left a bitter taste in the CARIFORUM Region and was read by the Region as a signal of the changing Europe on which they could not rely as much as they did in the past. While the CARIFORUM States fully understood, that Europe had to be cognizant of competition from China, India, NAFTA and Brazil, and also the need for it to shape a relationship with the developing countries of Asia and North Africa which are not Member States of the ACP, it expected the EU to do what it sees as being in its best interest and they could not be faulted .The Caribbean accepted that services and trade in services is the emerging trend in the region's trade pattern as its agricultural base is being diminished, and so that it was in the region's best interests to negotiate a comprehensive EPA and not just an EPA to for trade in goods.

Inward flows of investment is very crucial to the Region's development and so it was important to negotiate the so called "Singapore issues". However, both parties wanted this agreement, but for different reasons and so in the end this was a pivotal factor which drove the negotiation as each side knew the consequences of not having an agreement in place by December 31, 2007.

The manner in which the CARIFORUM States prepared themselves for the negotiations of the EPA exposed a model of inclusiveness, coordination, vision and a sense of the maturity of its diplomacy within the region and externally. The level of preparation and the breadth of activities which informed the preparation underlie both the legitimacy and competence of the process. It was a model of success in terms of structures, processes and the outcome. In a very frank presentation to the Joint ACP-EU Parliamentary Assembly in Vienna in June, 2006, Senior Barbadian Minister and political spokesperson for the CARIFORUM EPA, Dame Billie Miller left the European Union knowing that the CARIFORUM and the ACP state felt about their positioning and the reality of their conduct and questioned their political will to give meaning to their verbal expression on development.

The region's approach to the negotiations was focused and was driven by their desire to stand on their own and develop its resources and resist being dictated to. In the end both sides made compromises and the negotiations have further bonded the region as group of Small Island Developing States (SIDS) for a better understanding of their own aspirations. The CARIFORUM region got a deal which is not perfect, but one they are prepared to work with. The critics however, think otherwise.

The CARIFORUM-EU Economic Partnership is a comprehensive Free Trade Agreement, the terms of which have far reaching effect on future regional or bilateral Free Trade Agreement between the Global North and Developing South, or indeed between developing countries themselves. Critics of the agreement argue that it has gone too far in terms of commitments made, which have not yet been agreed at the multilateral level and it has therefore left other third world developing countries little

policy space or indeed negotiating space at the multilateral level more so in the areas of the so called “Singapore Issues” of competition Investment, Government procurement and Trade facilitation. But the terms of the Agreement cannot be seen in a single dimensional confine, as it is designed to take the region into the emerging Global political economy of Trade and to fit into the Trade Architecture and Regime which non define how the global trade structure is managed.

The real measure of the success of the CARIFORUM State in achieving their objective in negotiating a comprehensive agreement is the extent of use of its offensive and defensive approach to craft the best deal which they could have achieved given the circumstances of the conditions which they faced during the negotiation process. There have been gains and concession on both sides with each side believing that the terms of the agreement represents the furthest each was prepared to make concessions.

The agreement on the face of it provides some hope for the future of Trade in Goods between CARIFORUM States and Member State of the European Union. On the issue of border restrictions, the EU has provided Duty-Free, Quota Free (DFQF) access to CARIFORUM Goods entering European markets as at the 1st of January 2008, subject to conditions on importation of Rice and Sugar which are dealt with under different Protocols; The Region is allowed up to twenty-five years to liberalize. However, the exclusion list of Goods is problematic because of the commitment to eliminate all non Tariffs barrier on the entry into force of the agreement and such non tariff barrier commitment apply also to the products in the exclusion list. This would have an immediate negative impact on the revenue on CARIFORUM States. However, it does not seem from the tenor of the agreement that if such difficulty were to arise from fall out in revenues, whether these can be addressed by the CARIFORUM-EC Trade and Development Committee, as that committee will only in this regard deals with fall-out having to do with Tariff reductions. However, the power of the Trade and Development committee could prove disadvantageous to the CARIFORUM States as the Member States of the EU out number those of the CARIFORUM States by far.

On the question of the Most Favoured Nation (MFN) treatment, the agreement is restrictive on CARIFORUM's policy space in terms of its ability in future trade arrangements especially with developing countries. Because by committing themselves to give to the EC the right to demand similar treatment of in any future Free Trade Agreement it negotiated, were it to give better treatment to a third country's exports is to give the EU some degree of command over the region's trade policies. This provision is unique and it has caused concerns to some developing countries such as Brazil and India. The Region is of the view however, that the concerns are only in "theory" as in a practical sense, it is not foreseeable that the Region will enter into any Free Trade Agreement with a developing country in which its trading relationship would be of such great magnitude that it will be forced to give any better treatment to it than what the Regions has committed to the EC in the EPA.

The Rules of Origin (RoO) is also another area which has potential for development of the Regions Industrial base, because it offer better terms than what previously existed under the Lomé and Cotonou Regimes. However, it restrict the input of sugar in processed foods to be exported to the EU, in terms of the Sugar Regime which will be in place to monitor the importation of Sugar into the EU.

The treatment of Sugar is of particular importance to CARIFORUM as this is an area where the Caribbean has lost significantly following upon the denunciation of the long standing sugar Protocol of 1975. The reform of the EU internal market and its impact on the Sugar Regime establish with the ACP since 1975 come under severe challenge from other Sugar producers namely Brazil and Thailand. There has been a 36% reduction in price for ACP Sugar which has significantly affected revenue for the region

The only area in which the Caribbean seemed to have gained any benefit under the Sugar regime is to be reallocated any short fall under the quota given to a member State. However, after 2009, there will be no quota, but the price will be subject to the EU price mechanism which will be lower.

Further, CARIFORUM sugar will be competing with sugar produced in the French overseas Territories in the Caribbean, whose producers are being paid €2 billion between 2007 and 2013 for an output of 280,000 tonnes of sugar which will put them in a more advantageous position in the European market when compared to the CARIFORUM States. The region's problem is further exaggerated by the fact that, it will have to compete with Sugar producers under the EBA regime whose product will enter the EU DFQF automatically and independently of any EPA Arrangement across the entire ACP configuration.

In the Area of Trade in Services, the region made significant gains. However, its willingness to negotiate a service agreement which surpasses that which has been agreed at the multilateral level was of great concern to other A.C.P States. But, the region felt it very important to negotiate a service agreement which best suits its own Trade policy. The service agreement negotiated was mutually desirable but for different reason. The Europeans wanted to use the services agreement to further its Global Trade policy by “kick starting” the stalled Doha Development Round. The fact the CARIFORUM was eager to negotiate services had to do more with the emerging trends in the Regions trade direction, and the trade Economic diversification policies. To have negotiated an agreement which include the controversial Singapore issue was a bold but necessary move by the CARIFORUM States, one in which they knew they would suffer losses in order to make gains, so they prioritize. For example, the Region knew that getting an agreement on Procurement was vital to the interest of the Europeans and they had to concede something to the Europeans in order to achieve their priorities in the areas of Innovation and cultural diversity which some European state have vigorously opposed. So, while the commitment in the services sector is vital to both sides, they leave very little room for flexibility, although being asymmetrical. The rules are of binding nature and are subject to the dispute settlement and avoidance procedures of the Agreement. This EU's objectives have been met equally in these areas of the agreement further under-scored by the EU's willingness to fund the Implementation of the arrangements.

The CARIFORUM-EU Economic Partnership is one of the most innovative and far-reaching Free Trade agreement ever entered into with the north-South Relation indeed, so unique and innovative is the arrangements that it now the evidence of a new paradigm and model for future Free Trade agreement, not just between Europe and the rest of the developing world but among developing countries themselves. It also has implications for the multilateral system in the context of the Doha Round of negotiation.

The Agreement embraced innovative arrangement both in terms of giving meaning to special and differential Treatment Innovation in Service and Trade-related Issues, in some areas of Services and the so-called “Singapore Issue” it exceeds what have been agreed at the Multilateral level without infringing the main objectives and thrust of Caribbean Regional Trade and Development Policies, Philosophical and ideological thinking. It reflects pragmatism and boldness on the part of CARIFORUM States to conform the realities of the global political economy and carve for itself both offensive and defensive shields, However, while the CARIFORUM States have made positive achievements and gained, there are also serious challenges and in the short medium and long term when the provisions of the EPA are viewed in their entirety.

The implementation of the CARIFORUM-EC Economic Partnership Agreement is a work in progress which is scheduled to be completed in 2033. The process when completed will have a far reaching and fundamental impact on how the CARIFORUM States interact in the global political economy and also within their own domestic and regional markets. The costs of adjusting these economies and regional institutions will necessitate the mustering of the political will to first make the necessary legislative and policy changes, some of which run counter to the economic and business practices which are deeply embedded. The region will require financial and technical assistance to implement the provisions of the EPA, but it remains very tentative as the European’s commitments to assist is very slow in coming and in some instances will not be honoured as global economic and financial constraints take toll in European economies.

The raft of adjustments which are required cannot all be undertaken at the same time, but the region must take steps to honour their obligations under the Agreement even where it involves financial commitments for which they are unable to meet from their own revenue base, because the Europeans have skilfully evaded making firm commitments for financing the EPA as the commitments they have provided are more in the realm of declarations of intent which are not legally binding.

The real challenge for the CARIFORUM States in implementing the EPA cannot be fully assessed in the short term, but the approach to the implementation processes in and of it is problematic. This is so because in many instances the region made commitments and the cost of implementing those commitments are only being assessed by the regional task force after the completion of the Agreements. To date, the task force has completed less than fifty percent of the twenty studies which it had undertaken since the completion of the agreements. So as the Task Force completes each study, it is then that the costs of implementing these will be fully appreciated and the Europeans may not assist to the extent that the CARIFORUM States are expecting.

None of the Institutions established under the EPA is yet operational and therefore the region has been hampered in taking certain decisions which will impact the operation of those institutional bodies. Therefore the basic approach to the implementation of the CARIFORUM-EC Economic Partnership Agreement seems to be externally driven and so expose the extent to which the existing CARICOM institution, programs and mechanism may well have to be revamped, a situation which was never envisaged by the Cotonou Partnership Agreement between the ACP States and the EC which was intended to guide the negotiating process to foster the reduction of poverty, build regional integration and integrate the ACP States into the global regime. At the 26th meeting of COTED in Georgetown, the DR circulated a declaration with respect to the implementation of the Institutional Arrangement. The DR contends that the CARICOM Secretariat lacks the capacity to assume coordinating role to implement the EPA.

The DR advocated the creation of a New CARIFORUM-EPA Implementing Authority. However there is a deeper suspicion that the DR and the EC had established a “soft” relationship during the negotiations of the EPA which is consistent with Europe’s wider economic interest in Latin America. However, the slow pace of implementation has become a source of problem for some countries in the region. In a statement issued by the CRNM on the 10th December, 2008 the Dominican Republic at the 5th meeting of the CARIFORUM Council of ministers on external trade negotiations, had objected to the CARICOM Secretariat taking responsibility for implementation of the EPA. The DR called for a CARIFORUM entity to be given the responsibility as the CARICOM secretariat was not capable of effectively undertaking those responsibilities. The resolution to these challenges calls for political action at the highest levels of the region. Because the DR participated fully in the discussions and by policy they are part of the special COTED, they wished to be treated equally in the decision making and implementation processes.

The CARIFORUM States entered the negotiation very clear in their minds as to what they wanted to achieve and the kind of concession they wanted to make to secure the deal and also, where they were not prepared to concede. This strategy was offensive and defensive in this regard. Their advantage was the asymmetries which they exploited and used the negotiating structure to open up the EU’s stance and achieve their regions objectives. The structure and processes of the negotiations had advantages for the region, though they were complex in nature and operationally. The consultation process which was executed through the Technical Working Group (TWG) which met before and after each session had served a useful purpose. However the CRNM was never daunted by the extent of its task to negotiate an agreement of such magnitude within the limited time and with such a formidable opposition. The outcome of the negotiation can only be expressed or benchmarked in terms of what the region had achieved in light of its stated goal; in order to determine how ethical the process had been.

The Caribbean in negotiating this EPA had maintained the highest ethical standards in keeping with the expectation of its domestic, regional and International Reputation. It had set out to achieve the following: retain preferential accesses and minimal preference erosion, to protect the interest of its LDC's under the regional umbrella, maximize market access to the EU market and to improve access in term of service in the European market to impact immediate returns, promote inward investments which are environmentally friendly and to improve the region's competitiveness and impact economic diversification of the regional economies through investment and innovations. It was also mandated to protect small and Medium Size enterprises (SMEs) engaged in the domestic markets of the region, promote regional integration, economic cooperation and good governance and to craft an agreement which was development friendly to the region and finally to secure addition funding outside of the EDF for EPA related implementation, capacity building and integration support. All these objectives were met in varying degrees notwithstanding the uneven Economic Status between both sides in terms of resources in the areas of Human, technical and financial.

The Caribbean had clear and definite positions as to why it needed to get an agreement within the time. In the main the region was motivated to negotiate and complete an agreement before the expiration date to avoid disruption of the Regions export to the European Union (EU) as a number of products would be subject to tariff come the 1st January 2008. So also, having settled the negotiations on trade in services, it became clear that if the region could secure an agreement on market access for good even at the very late stages of the negotiation, then it was possible to sign a comprehensive agreement. Because, the region saw the EPA as a unique package of trade arrangements complemented by a development cooperation dimension and therefore to separate trade in goods, trade in services and trade related issues would not be to their advantage and diminish the regions ability to leverage in one area to gain in another in which it had a more offensive interest. But the region wanted to maintain its integrity and avoid fragmentation which could create a situation where the EU may be inclined to negotiate separate bilateral or sub regional Trade and Development agreement. It is

within this context that the Ethical dimensions of the negotiations are highlighted on the part of the CRNM in coordinating the negotiation processes so as to facilitate the CARIFORUM States to maintain its core principles while achieving its objectives in keeping with its mandate.

The problems of the region in moving forward seems to rest squarely in their historical past dating from the demise of the West Indian Federation which has left a degree of insularity even more pronounced than before. The region is therefore very slow to act politically to implement it's the decisions and recommendations of the West Indian Commission⁷¹³ which warned of the dangers to the Caribbean of being left behind in light of the changes in Europe's Single Market, the demise of the Soviet System and the emergence of Free Trade in the Americas. It called for the Establishment of an executive arm of the regional Integration movement to facilitate a higher level of functionalism and a deeper degree of policy coherence and management and also remove the lethargy which undermines the implementation of regional decisions.

Indeed, there seems to be a deep-seated fear for lost of power and control at the political level were some decisions be taken outside of national borders. The findings and recommendations of the West Indian Commission are very instructive for the closer cooperation and coordination of the region's political and administrative initiatives, undertakings and programs⁷¹⁴. For even so, in the establishment of the Caribbean Court of Justice as the region's final Court of Appeal is finding resistance from within, notwithstanding that by Treaty the regional governments have agreed to establish and indeed are financing the court. But, while the Court is sidelined in the EPA as a dispute settlement Mechanism, the region has gained in confidence and prestige from these negotiations.

⁷¹³ Time For Action Report of the West Indian Commission, The West Indian Commission, 1992. p.3

⁷¹⁴ Ibid. See Recommendations of the West Indian Commission.

In the end, the CARIFORUM States have made the paradigm shift in global trade negotiations by effectively taking on tough issues which even more powerful States have avoided at the multilateral level for example the Government Procurement and the full breath of the so called 'Singapore Issues', the region has shown that it has the will and temerity to negotiate with some of the World's leading trade negotiators and gain concessions which seemed against the odds.

The region lead in the initiatives for the First Lomé and was the first to complete a comprehensive Free Trade Agreement which surpass the WTO and GATT and requirement in services and trade relates issues. Further, the arguments advanced that ACP States are reactive and also the added assumptions that the European Union's negotiators are so experienced in prying open other markets by use of their superior market strength and technical competences in trade negotiations seemingly is hanging in the balance, because the CARIFORUM States have demonstrated that even in circumstances of limited financial resources, they possessed the technical capabilities to negotiate and were prepared not to react but to be proactive. They came away from the negotiations with significant gains in light of their development strategies and policies, indeed the European were pushed to their optimum in these negotiations by a group of former colonies which the EU had unilaterally graduated from the category of Least Developed Country (LDC) except for the United Nations designated Haiti which is now the only LDC in the configuration. However, the constraints that faced the CARIFORUM States during the negotiations were very daunting and indeed challenging, but the region was not prepared to give the appearance that it was negotiating a benefits package of aid.

The region wanted to ensure that its best interests were protected as far as it could, because what was at stake for them was far greater that getting aid. Instead it was the very viability of the region and its survival in a rapidly changing global markets place where services out strip production of goods.

Finally, notwithstanding the levels of economic disparity between the two sides, the Caribbean accepted the unequal nature of the partnership for its value in a pragmatic and constructive sense and used the Asymmetry in power dynamism of current global trade inertia to carve a way forward for itself and thus give a rebirth to the realist theory of international relations by illuminating a direction to new era for small vulnerable states to become proactive in order to protect their vital commercial interests.

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LIST OF INTERVIEWEES

NAMES	DATE	VENUE	POSITION
Ambassador Federico Cuello*	May 15, 2009	New York, United States of America	Former Dominican Republic to Brussels. Lead Negotiator for EPA.
Ambassador Derrick Heaven*	May 22, 2009	Kingston, Jamaica	Chairman of the Sugar Industry Authority of Jamaica
Ambassador Edwin Laurent*	July 2, 2009	Commonwealth Secretariat, London	St. Lucian Diplomat to Brussels
Ambassador Ellen Bogle*	March 23, 2009	Kingston, Jamaica	Former Jamaica's High Commissioner to Trinidad during the Establishment of CARIFTA and CARICOM, now a Trade Representative for a leading private sector entity who sat in at the preparatory meetings for negotiating the EPA. Private representation in EPA negotiation. Retired High Commission to London
Ambassador Errol Humphrey*	June 12, 2009	Bridgetown, Barbados	Former Barbadian Ambassador to Brussels and Vice Dean of the College of Negotiators in Negotiating EPA.
Ambassador Henry Gill*	June 10, 2009	CRNM Bridgetown, Barbados.	Former Director-General. Caribbean Regional Negotiating Machinery (CRNM). Oversight responsibility for negotiating CARIFORUM EPA.
Ambassador Owen Singh^	May 13, 2009	London, United Kingdom	Former Jamaican Ambassador to Brussels and Ethiopia. He participated in negotiating Lomé II
Americo.Beviglia-Zampetti*	May 5, 2009	Brussels, Belgium	DG Trade. He Negotiated Trade in the Cariforum EPA.
Anand Persaud*	June 25, 2009	Georgetown, Guyana	Editor in Chief of Starbok News in Guyana. Gave very wide coverage to the EPA
Anthony Hylton*	Feb. 20, 2009	Kingston,	Former Jamaican Minister of Foreign

		Jamaica	Affairs and Foreign Trade of Jamaica who negotiated the EPA
Branford Isaacs*	June 18, 2009 & April 15, 2010	Bridgetown, Barbados/Telephone Interview	Consultant to Caricom Secretary General. Lead Negotiator for market access in EPA. Coordinator for CARIFORUM implementation of EPA
Carl Greenidge*	June 22, 2009	Bridgetown, Barbados	CRNM Staff, Former Deputy Secretary General ACP, CRNM. Wrote- <i>New Perspective on European Development Cooperation</i> ed. Lister, Marjorie <i>Return to Colonialism? The new orientation of European Development Assistance</i> (Westview Press, 1999)
Clement Imbert*	June 15, 2009	Engineering Dept UWI St. Augustine. Trinidad & Tobago	Participated in the negotiations of the EPA. Service Sector.
Dame Billie Miller*	May 22, 2009	Kingston, Jamaica	Former Barbadian Minister of Foreign Affairs & Foreign Trade. Lead Political Negotiator for CARIFORUM EPA. Former Chairman of ACP Council of Ministers.
Dav-Ernán Kowlessar*	June 16, 2009	Port-of-Spain, Trinidad	Business Development Consultant
David Hayles*	June 24, 2009	Georgetown, Guyana	CARICOM Secretariat
David Jessop*	July? 2009	United Kingdom	Of the British based Caribbean Council, Expert on Caribbean Trade Issues. Director of Commentator on Caribbean Trade Issues. Written extensively on Caribbean issues.
David Prendergast*	April 15, 2010 & March 14, 2008	Kingston, Jamaica	Former Jamaican Diplomat in Brussels. Attended all negotiating sessions for EPA. In charge of EPA implementation. Ministry of Foreign Affairs & Foreign Trade, EPA implementation Unit.
Dr. Anthony Gonzalves*	June 15, 2009	Port-of-Spain, Trinidad & Tobago	Former Consultant to ACP, 1977-1982. Consultant to CARICOM, CRNM. Worked at W.T.O and was Consultant/ FTAA negotiation. University Lecturer.
Dr. Henry Jeffrey*	June 26, 2009	George Town,	Former Guyanese Minister of Foreign

		Guyana, South America	Affairs & Int'l Cooperation involved with EPA. negotiations
Dr. Marshall Hall*	March 3, 2009	Kingston, Jamaica	Retired Managing Director of Jamaica Producers Ltd. Exporters of bananas to the EU.
Dr. Kusha Haraksing*	June 15, 2009	UWI ST. Augustine Trinidad & Tobago	Consultant, Lead Negotiator for legal and constitutional issues. Chairman of Caribbean Competition Commission
Elsa Fenet*	June 12, 2009	EU office in Barbados	Head of Trade in the EU Delegation in Barbados. Participated in the EPA Negotiations.
Gregory Downs*	May 6, 2009	Brussels, Belgium	Coordinator, Caribbean Regional Negotiating Machinery (CRNM), Brussels
Greg Lockey*	June 16, 2009	Port-of-Spain, Trinidad	President of the Trinidad & Tobago Manufacturers Association: A Group which participated in all the negotiations sessions of the EPA.
Joel Richards*	June 23, 2009	Bridgetown, Barbados	Caribbean Trade Team (Barbadian Private Sector Grouping). He attended the negotiation.
John Caloghirou*	May 4, 2009	European Commission, Brussels, Belgium	DG-Development, Negotiated the Development provisions of the CARIFORUM- EC EPA
Junior Lodge^	November 11, 2008 & May 7, 2009	Geneva, Switzerland/Tel ephone Interview	Of the CRNM, coordinator in Brussels during the negotiations for EPA, now the Caribbean Regional Negotiating Machinery CRNM Representative in Geneva.
Mr. Achille Bassilekin III*	May 5, 2009	Brussels, Belgium	Assistant to the Head of the ACP
Madame Hélène Massan Fiagan*	April 30, 2009	ACP Headquarters, Brussels	Expert Customs Cooperation ACP Brussels. Consultant to ACP Secretariat. Market access.
Morgan Githinji*	April 30, 2009	ACP Headquarters, Brussels	Expert, Multilateral Trade Matters, ACP Brussels
Natallie Rochester^	May 2009	CRNM/Telephone Interview	Of the Caribbean Regional Negotiating Machinery (CRNM)

Neviller Totaram*	June 25, 2009	Georgetown, Guyana	Ministry of International. Participate in negotiating EPA.
Nigel Durrant*	June 25, 2009	Georgetown, Guyana	Head Negotiator for Agriculture. College of CRNM. Negotiator CRNM
Philip Williams*	June 22, 2009	Hastings Main Road, Christ Church, Barbados	Executive Director Caribbean Export Development Agency
P. J. Patterson*	March 3, 2009	Kingston, Jamaica	Former Prime Minister of Jamaica and an Architect of the 1st Lomé Convention and lead Sugar negotiator for the ACP Group. 1973-1975.
Professor Norman Girvan*	June 15, 2009	UWI ST. Augustine Trinidad & Tobago	Professor. Leading Caribbean Economist, author. University Lecturer and former Secretary General of OAS. Critic of the EPA. Attended the Guyana Summit, December 7, 2007 on the EPA.
Ricky Singh*	June 22, 2009	Bridgetown, Barbados	Leading Caribbean Journalist & Writer. Over 30 years of writing on Caribbean issues. Covered the negotiations of the EPA
Sam Chandler*	June 10, 2009	Bridgetown, Barbados	Permanent Secretary Ministry of Foreign Affairs and Foreign Trade. Participated in EPA Negotiation.
Senator Keith. D Knight*	November 14, 2008	Kingston, Jamaica	Former Minister of Foreign Affairs and Foreign Trade of Jamaica, and former chairman of ACP Council of Ministers (2001-2006)
Sir Alister McIntyre*	November 14, 2008	Kingston, Jamaica	A venerable Caribbean integrationist Celebrated West Indian, economist, academic and intellectual, and considered one of the great social thinkers of his time, he piloted the movement for integration as Secretary-General of CARICOM from 1974-1977, and as Vice Chairman of the

			West Indian Commission. University of the West Indies as Lecturer and Vice-Chancellor from 1988 and as Director of the Institute of Social and Economic Research (ISER) between 1967 and 1974. He worked in UNCTAD from 1977 to 1987, first as director of the Commodities Division and then as deputy secretary-general and officer-in-charge. Served at the Caribbean Community, was assistant secretary-general. He Led the Technical team for the Caribbean During the Negotiations for Lomé I and visited Africa in the preparatory stages for the negotiation of Lomé.
Sir Shridath Ramphal*	June 9, 2009	Bridgetown, Barbados	Ramphal previously served as the Foreign Minister of Guyana from 1972-1975. Her was responsible for Negotiating the Trade Regime in the First Lomé 1973-75. Leading Caribbean Personality and Retired Diplomat and a prolific Writer on Trade and Diplomacy. An Authority on Caribbean Economic and political issues.
Thomas Millar*	March 20, 2009	EU Delegation Kingston, Jamaica	Economics, Trade and Politics, Information Delegation of the European Union in Jamaica.
Viwanou Gnassounou* Virgina Paul April 12, 2010 Castries St. Lucia. I/C of EPA Implementation at OECS Secretariat.	April 30, 2009	ACP Headquarters, Brussels	Expert in charge of Protocols and Commodities ACP, Brussels

Key: * Face-to-Face recorded interviews.

^ Telephone interviews.

APPENDIX I

ACP MEMBER STATES

	Country	Capital	Area – sq.km	Population
1	Angola	Luanda	1,246,700	13,068,161
2	Antigua and Barbuda	Saint. John's	443	86,754
3	Barbados*	Bridgetown	431	285,653
4	Belize	Belmopan	22,966	314,522
5	Benin*	Porto-Novo	112,620	9,056,010
6	Botswana*	Gaborone	600,370	2,029,307
7	Burkina Faso*	Ouagadougou	274,200	16,241,811
8	Burundi *	Bujumbura	27,830	9,863,117
9	Cameroon *	Yaoundé	475,440	19,294,149
10	Cape Verde	Praia	4,033	508,659
11	Central African Republic *	Bangui	622,984	4,844,927
12	Chad *	N'Djamena	1,284,000	10,543,464
13	The Commonwealth of The Bahamas *	Nassau	13,940	310,426
14	Comoros	Moroni	2,170	773,407
15	Congo(Brazzaville) *	Brazzaville	342,000	4,125,916
16	Cooke Island	Avarua	240	11,488
17	Cote d'Ivoire*	Yamoussoukro	322,460	21,058,798
18	Cuba	Havana	110,860	11,477,459
19	Democratic Republic of Congo* (Kinshasa)	Kinshasa	2,345,410	70,916,439
20	Djibouti	Djibouti	23,000	740,528
21	Dominica	Roseau	754	72,813
22	Dominican Republic	Santo Domingo	48,730	9,794,487
23	East Timor	Dili	15,007	1,154,625
24	Equatorial Guinea *	Malabo	28,051	650,702

25	Eritrea	Asmara	121,320	5,792,984
26	Ethiopia *	Addis Ababa	1,127,127	88,013,491
27	Federated States of Micronesia	Palikir	702	107,154
28	Fiji *	Suva	18,270	957,780
29	Gabon *	Libreville	267,667	1,545,255
30	Gambia *	Banjul	11,300	1,824,158
31	Ghana *	Accra	239,460	24,339,838
32	Grenada *	Saint George's	344	107,818
33	Guinea *	Conakry	245,857	10,324,025
34	Guinea-Bissau *	Bissau	36,120	1,565,126
35	Haiti	Port-au-Prince	27,750	9,203,083
36	Jamaica *	Kingston	10,991	2,847,232
37	Kenya *	Nairobi	582,650	40,046,566
38	Kiribati	Tarawa	811	99,482
39	Lesotho *	Maseru	30,355	1,919,552
40	Liberia *	Monrovia	111,370	3,685,076
41	Madagascar *	Antananarivo	587,040	21,281,844
42	Malawi *	Lilongwe	118,480	15,447,500
43	Mali *	Bamako	1,240,000	13,796,354
44	Marshal Islands	Majuro	181	65,859
45	Mauritania *	Nouakchott	1,030,700	3,205,060
46	Mauritius *	Port Louis	2,040	1,294,104
47	Mozambique	Maputo	801,590	22,061,451
48	Namibia	Windhoek	825,418	2,128,471
49	Nauru	No official capital	21	14,264
50	Niger *	Niamey	1,267,000	15,878,271
51	Nigeria *	Abuja	923,768	152,217,341
52	Niue	Alofi	260	1,354

53	Palau	Koror	458	20,879
54	Papua New Guinea	Port Moresby	462,840	6,064,515
55	Republic of Guyana*	Georgetown	214,970	748,486
56	Republic of Togo*	Lome	56,785	6,199,841
57	Rwanda*	Kigali	26,338	11,055,976
58	Samoa(formerly western Samoa)*	Apia	2,944	192,001
59	Sao Tome and Principe	Sao Tome	1,001	175,808
60	Senegal*	Dakar	196,190	14,086,103
61	Seychelles	Victoria	455	88,340
62	Sierra Leone*	Freetown	71,740	5,245,695
63	Solomon Islands	Honiara	28,450	609,794
64	Somalia*	Mogadishu	637,657	10,112,453
65	South Africa	Pretoria ²	1,219,912	49,109,107
66	St. Kitts and Nevis	Basseterre	261	49,898
67	St. Lucia	Castries	616	160,922
68	St. Vincent and the Grenadines	Kingstown	389	104,217
69	Sudan*	Khartoum	2,505,810	41,980,182
70	Suriname	Paramaribo	163,270	486,618
71	Swaziland*	Mbabane ³	17,363	1,354,051
72	Tanzania*	Dar es Salaam	945,087	41,892,895
73	Tonga*	Nuku'alofa	748	122,580
74	Trinidad and Tobago*	Port-of-Spain	5,128	1,228,691
75	Tuvalu	Fongafale	26	10,472
76	Uganda*	Kampala	236,040	33,398,682
77	Vanuatu	Port-Vila	12,200	221,552
78	Zambia*	Lusaka	752,614	12,056,923
79	Zimbabwe	Harare	390,580	11,651,858

Source: ACP Secretariat. <http://acpsec.org/en/acp-states.htm>. Download. March 17, 2010

Population: source: World Fact Book July 2009

Note.1: due to a volcanic eruption in 1997 an interim government seat is establish at Brades.

Note.2: Pretoria is administrative capital; Cape Town is legislative capital; Bloemfontein is judicial capital.

Key: * Original 46 Members of ACP States. (African States: 37, Caribbean States: 6 Pacific States: 3)

APPENDIX II

EU MEMBER STATES

BELGIUM		BULGARIA	
Year of entry	:Founding Member	Year of entry	:2007
Capital city	:Brussels	Capital city	:Sofia
Total area	:30 158 Km ²	Total area	:110 993.6 Km ²
Population	:10 200 000	Population	:7 970 000
CZECH REPUBLIC		DENMARK	
Year of entry	:2004	Year of entry	:1973
Capital city	:Prague	Capital city	:Copenhagen
Total area	:78 866 Km ²	Total area	:43 094 Km ²
Population	:10 285 000	Population	:5 300 000
GERMANY		ESTONIA	
Year of entry	:Founding Member	Year of entry	:2004
Capital city	:Berlin	Capital city	:Tallinn
Total area	:356 854 Km ²	Total area	:45 226 Km ²
Population	:82 000	Population	:1 440 000
GREECE		SPAIN	
Year of entry	:1981	Year of entry	:1986
Capital city	:Athens	Capital city	:Madrid
Total area	:131 957 Km ²	Total area	:504 782 Km ²
Population	:10 500 000	Population	:39 400 000
FRANCE		IRELAND	
Year of entry	:Founding Member	Year of entry	:1973
Capital city	:Paris	Political system	:Republic
Total area	:550 000 Km ²	Capital city	:Dublin
Population	:60 400 000	Total area	:70 000 Km ²
		Population	:3 700 000
ITALY		CYPRUS	
Year of entry	:Founding Member	Year of entry	:2004
Political system	:Republic	Capital city	:Nicosia
Capital city	:Rome	Total area	:9250 Km ²
Total area	:301 263 Km ²	Population	:865 000
Population	:57 600 000		
LATVIA		LITHUANIA	
Year of entry	:2004	Year of entry	:2004
Capital city	:Riga	Capital city	:Vilnius
Total area	:64 589 Km ²	Total area	:65 200 Km ²
Population	:2 400 000	Population	:3 700 000

Table: **EU MEMBER STATES CONT'D**

LUXEMBOURG		HUNGARY	
Year of entry Capital city Total area Population	:Founding Member :Luxembourg :2 586 Km ² :429 200	Year of entry Capital city Total area Population	:2004 :Budapest :93 030 Km ² :10 070 000
MALTA		NETHERLANDS	
Year of entry Capital city Total area Population	:2004 :Valetta :316 Km ² :390 000	Year of entry Capital city Total area Population	:Founding Member :Amsterdam :41 864 Km ² :15 800 000
AUSTRIA		POLAND	
Year of entry Capital city Total area Population	:1995 :Vienna :88 945 Km ² :8 100 000	Year of entry Capital city Total area Population	:2004 :Warsaw :312 685 Km ² :38 655 000
PORTUGAL		ROMANIA	
Year of entry Capital city Total area Population	:1986 :Lisbon :92 072 Km ² :10 800 000	Year of entry Capital city Total area Population	:2007 :Bucharest :238 391 Km ² :21 700 000
SLOVENIA		SLOVAKIA	
Year of entry Capital city Total area Population	:2004 :Ljubljana :20 273 Km ² :1 985 000	Year of entry Capital city Total area Population	:2004 :Bratislava :48 845 Km ² :5 395 000
FINLAND		SWEDEN	
Year of entry Capital city Total area Population	:1995 :Helsinki :338 000 Km ² :5 100 000	Year of entry Capital city Total area Population	:1995 :Stockholm :450 000 Km ² :8 900 000
UNITED KINGDOM			
Year of entry Capital city Total area Population	:1973 :London :242 500 Km ² :58 600 000		

Source: Europa

In order to become a member of the EU, a country must meet the Copenhagen criteria.
The Copenhagen European Council of June 1993 as defined the criteria as:

- The stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities (political criterion)

- The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the EU (economic criterion);
- The ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union (criterion concerning adoption of the community acquis)

APPENDIX III

ACP/27/005/00 Rev.16
Legal Service/NJB/mgf
[Final Version]

Brussels, 28 November 2003

THE GEORGETOWN AGREEMENT

**As amended by Decision No.1/LXXVIII/03
of the
78th Session of the Council of Ministers,
Brussels, 27 and 28 November 2003**

PREAMBLE

THE GOVERNMENTS OF THE AFRICAN, CARIBBEAN AND PACIFIC STATES, hereinafter referred to as “the ACP States”;

DESIROUS OF CONTRIBUTING through continuous and concerted endeavours to the reinforcement of the process of solidarity of developing countries;

HAVING REGARD to the ACP - EEC Lomé Conventions and the ACP-EC Partnership Agreement signed on 23 June 2000 in Cotonou, hereinafter referred to as the ACP-EC Partnership Agreements;

HAVING REGARD in particular to the Suva Declaration, the Montego Bay Plan of Action and the Harare Declaration on intra-ACP Cooperation;

TAKING INTO ACCOUNT the conclusions of the Summits of Heads of State and Government of ACP States held at Libreville on 6 and 7 November 1997 and at Santo Domingo on 25 and 26 November 1999;

AWARE of the profound changes in the international, political and economic environment;

REAFFIRMING their commitment to the respect for human rights and the rights of peoples, democratic principles and the rule of law;

DESIROUS of consolidating and reinforcing the existing solidarity and unity of the ACP States, and of promoting improved cooperation between their peoples on the basis of interdependence, complementarity and mutual interest;

DETERMINED to promote and develop greater and closer trade, economic, political, social and cultural relations between the ACP States;

RESOLVED to ensure a firm foundation in their respective countries for human-centred, equitable and sustainable development;

RECOGNISING the importance of regional integration, intra-ACP cooperation and cooperation among ACP and other developing countries as a means of promoting the socio-economic development of the ACP States;

CONVINCED that the realization of sustainable development, the eradication of poverty, illiteracy and disease as well as the gradual and smooth integration of the ACP States into the global economy are legitimate objectives reflecting the aspirations of our peoples;

DETERMINED to ensure that the ACP-EC Partnership Agreements contribute to the realization of the common aspirations of developing countries, to self-reliant, endogenous and self-sustained development based on their systems of cultural and social values;

COGNISANT of the need to maintain and expand multifaceted relations with other States, groups of *States* and international organisations;

RECOGNISING the importance of solidarity and unity in cooperation among the ACP States;

DESIROUS of enhancing the political identity of the ACP *Group* to enable them to act and speak with a single voice in all international fora and organisations, and

RESOLVED to establish the African, Caribbean and Pacific Group of States to achieve common objectives so as to contribute towards the realization of a new, fairer and more equitable world order;

HAVE AGREED as follows:

CHAPTER I**MEMBERSHIP AND OBJECTIVES OF THE ACP GROUP****Article 1****The ACP Group**

1. There is hereby established the African, Caribbean and Pacific Group of States, designated “the ACP Group”.
2. The Members of the ACP Group shall be the African, Caribbean and Pacific States party to this Agreement or to the ACP-EC Partnership Agreement.
3. Accession to the ACP Group shall be in accordance with Article 28 (1) of this Agreement.
4. The ACP Group shall be organised on the basis of six geographical regions, namely Central Africa, East Africa, Southern Africa, West Africa, the Caribbean and the Pacific.
5. The ACP Group shall have legal personality. It shall have the capacity to contract, acquire, and dispose of movable and immovable property and to institute legal proceedings.

Article 2**The Objectives of the ACP Group**

The main objectives of the ACP Group shall be to:

- a) ensure the realisation of the objectives of the ACP-EC Partnership Agreements in particular, the eradication of poverty, sustainable development and the smooth and gradual integration of ACP States into the world economy;
- b) co-ordinate the activities of the ACP *Group* in the implementation of the ACP-EC Partnership Agreements;
- c) promote and strengthen unity and solidarity among the ACP States, as well as understanding between ACP peoples;
- d) consolidate, strengthen and maintain peace and stability as a precondition for improving the well-being of ACP peoples in a democratic and free environment;

- e) contribute to the development of greater and closer economic, political social and cultural relations among developing countries and, to that end, cooperation between the ACP States mainly in the fields of trade, science and technology, industry, transport and communications, education, training and research, information and communication, the environment, demography and human resources ;
- f) promote policies especially in the areas of the environment and the rational management of natural resources, in pursuit of sustainable development ;
- g) promote and reinforce intra-ACP regional integration so as to enable ACP States to increase their competitiveness and to meet the challenges of globalization;
- h) strengthen relations with the European Union with the aim of speeding up the development of ACP States;
- i) define a common stand for the ACP vis-à-vis the European Union on matters covered by the ACP-EC Partnership Agreements and on the issues tackled by international bodies likely to affect the implementation of the ACP-EC Partnership Agreements;
- j) aim for the promotion of a fairer and more equitable new world order;
- k) strengthen the political identity of the ACP Group to enable it to act as a coherent political force in international bodies and to ensure that due regard is accorded its specific interests;
- l) promote and reinforce political dialogue within the ACP Group so as to consolidate ACP unity and solidarity;
- m) engage in effective and meaningful political dialogue at the appropriate levels with the European Union in order to strengthen ACP-EC Partnership;
- n) contribute to strengthening regional mechanisms for the prevention, management and peaceful settlement of conflicts and by pursuing and developing cooperation between ACP States and third States, and;
- o) establish contacts and relations with other States and groups of States.

CHAPTER II

ORGANS OF THE ACP GROUP

Article 3

The decision-making bodies of the ACP Group shall be:

- a) the Summit of Heads of State and Government, hereinafter referred to as the Summit, which shall be the supreme organ;
- b) the Council of Ministers; and
- c) the Committee of Ambassadors.

Article 4

There shall be a Secretariat of the ACP Group which shall be headed by a Secretary General.

Article 5

An ACP Parliamentary Assembly may, in due course, be established.

Pending the establishment of the aforesaid Assembly, the provisions of Article 18 of the Georgetown Agreement as revised in November 1992 shall, mutatis mutandis, continue to apply.

Article 6

The Council of Ministers may propose to the Summit, the creation of other consultative organs whenever necessary.

Article 7

The Summit

1. The Summit of Heads of State and Government shall consist of the Heads of State or Government of the ACP States or their designated representative.
2. The Summit shall meet on the initiative of its Bureau or on the recommendation of the Council of Ministers.
3. The Summit shall be presided over by the Head of State or Government of the host country.

Article 8

In the inter-sessional period, the Summit shall be coordinated by a Bureau composed as follows:

- a) The President-in-office;
- b) The out-going President;
- c) The in-coming President, if already designated.

Article 9

The Summit shall lay down the general policy of the ACP Group and issue the Council of Ministers with the directives relative to its implementation.

Article 10

The Council of Ministers

The Council of Ministers shall consist of a member of the Government of each of the ACP States or its designated representative.

Article 11

The Council of Ministers shall determine the modalities for the implementation of the general policy referred to in Article 9 of this Agreement and shall periodically evaluate its state of execution.

Article 12

Bureau of the Council

1. There shall be a Bureau of the Council of Ministers which shall co-ordinate the work of the Council.
2. The Council shall appoint the members of its Bureau at the end of each ordinary session.
3. The Bureau shall be composed of nine Members and its composition shall be as follows:
 - a) the President of Council, designated on the basis of rotation among the six regions identified in Article 1 (4) in conformity with arrangements agreed on by the ACP Group.
 - b) one member from each of the four regions of Africa, one from the Caribbean and one from the Pacific, with the region which holds the Presidency being represented by another country from that region;
 - c) the out-going President and the in-coming President, in an ex-officio capacity.
4. The President of Council together with the outgoing and incoming Presidents shall comprise the Troika of the Bureau.

Article 13

1. The Council of Ministers shall meet in ordinary session every six months.
2. In addition, the Council may decide to meet in special session on its own initiative *or* on the decision of the President after consultation within the Troika and with the representative of each of the regions on the Bureau.
3. Furthermore, the Council of Ministers shall, as the need arises, convene meetings of ACP Ministers responsible for the various aspects included among the objectives of the ACP Group.

Article 14

The acts of the Council of Ministers may take the form of a decision, resolution or recommendation.

Article 15

Decision-making within the Council

1. The acts of the Council of Ministers shall be adopted on the basis of a consensus of its members.
2. However, under special circumstances, and after consultation among its members, the Council of Ministers may decide on the matter by a majority of four-fifths of its members.
3. In the event of such a majority not being obtained after voting in the course of two meetings of a session of Council, the matter shall be postponed to the next session, at which the Council shall decide on the matter by a majority of two-thirds of its members.

Article 16

The Council of Ministers shall adopt its rules of procedure.

Article 17

The Council of Ministers may delegate any of its attributions to the Committee of Ambassadors.

Article 18

The Committee of Ambassadors

The Committee of Ambassadors shall consist of an Ambassador or other designated representative of each of the ACP States.

Article 19

1. The Committee of Ambassadors shall assist the Council of Ministers in the performance of its functions, and shall carry out any mandate entrusted to it by the latter.
2. In particular, the Committee of Ambassadors shall monitor the implementation of the ACP-EC Partnership Agreement with a view to achieving the objectives set out therein.
3. The Committee of Ambassadors shall present a report on its activities to each regular session of the Council of Ministers.

Article 20

1. There shall be a Bureau of the Committee of Ambassadors which shall co-ordinate its work.
2. The Bureau of the Committee of Ambassadors shall comprise nine members and Article 12 of this Agreement shall apply mutatis mutandis in relation to its composition.
3. The members of the Bureau of the Committee of Ambassadors shall be the representatives of the same States as those which comprise the membership of the Bureau of the Council of Ministers.

Article 21

The acts of the Committee of Ambassadors shall be in the form of a decision, resolution or recommendation and shall be adopted on the basis of consensus of its members.

Article 22

The Committee of Ambassadors shall adopt its own rules of procedure.

CHAPTER III

THE SECRETARIAT OF THE ACP GROUP

Article 23

1. The Secretariat of the ACP Group shall be located in Brussels, Belgium.
2. The Secretariat of the ACP Group shall be managed by a Secretary General vested with Executive powers.
3. The Secretariat of the ACP Group shall:
 - a) carry out all tasks as may be assigned to it by the Summit of Heads of State and Government, the Council of Ministers, the Committee of Ambassadors and the ACP Parliamentary Assembly ;
 - b) contribute to the implementation of the decisions of these organs;
 - c) monitor the implementation of the ACP-EC Partnership Agreement; and
 - d) service the organs of the ACP Group and, as appropriate, the joint institutions established under the ACP-EC Partnership Agreement.

Article 24

1. The Secretary General:
 - a) shall ensure that good quality technical and administrative support and services are provided by the Secretariat to the members and the organs of the ACP Group;
 - b) is the Authorising Officer for the Budget;
 - c) manages the personnel, the projects and programmes; and
 - d) shall be the designated representative of the ACP Secretariat.

2. The Secretary-General may present proposals to the Committee of Ambassadors for the effective achievement of the objectives set out in Article 2.
3. The Secretary-General shall through the Committee of Ambassadors, present a report to each regular Session of the Council of Ministers on the activities of the Secretariat.

Article 25

1. The Council of Ministers shall determine the organisational structure of the ACP Secretariat, and lay down its staff regulations, on the proposal of the Committee of Ambassadors.
2. The Council of Ministers shall, appoint the Secretary-General of the ACP Group on the basis of merit, qualifications, professional competence and integrity.
3. The Secretary-General shall appoint Assistant Secretaries-General in accordance with the Staff Regulations on the basis of merit, qualifications, professional competence and integrity of the proposed candidates after consultation with the regions.
4. The appointments to the most senior positions of the ACP-EU joint institutions that fall to the ACP Group shall be made according to the same criteria of merit, qualifications, professional competence and integrity.
5. The principle of rotation shall be applied to all these appointments so as to ensure that account is taken of the need to ensure an equitable and balanced representation of the regions as identified in Article 1 of this Agreement.
6. The Secretary-General shall recruit staff, in accordance with the staff regulations of the ACP Secretariat, on the basis of merit, qualifications, professional competence and integrity. In addition, the staff complement shall, to the fullest extent possible, reflect an equitable and balanced representation of the Member States of the ACP.

Article 26

1. In the event of duly certified incapacity of the Secretary General, or whenever it is clear that his resumption of duties shall be unexpectedly delayed in such a manner as to impair the smooth and efficient running of the ACP Secretariat, the President of Council shall authorise the Assistant Secretary-General who is the most senior by virtue of his date of assumption of office, to temporarily perform the duties of Secretary General.
2. The temporary performance of the duties of Secretary General by the Assistant Secretary General shall cease on the day before the date specified by the incumbent to the President of Council and the Assistant Secretary-General in writing, as the date that he will resume his duties.
3. In the event of the Secretary-General not resuming duty after the expiry of sixty days from the date of the commencement of the temporary performance of duties by the Assistant Secretary-General, the Council of Ministers shall decide at its next session on how to resolve the situation.
4. If the next session of Council is not held before the expiry of an additional period of thirty days, the President of Council shall consult within the Troïka and with the representative of each of the regions on the Bureau, with a view to seeking a temporary solution pending a Council decision at its next session.

Article 27

1. The Council of Ministers shall establish the financial regulations and the Budget of the ACP Secretariat.
2. Each ACP State shall contribute to the Budget in accordance with the provisions established by the Council of Ministers.

CHAPTER IV**NEW MEMBERS AND OBSERVERS****Article 28**

1. The Council of Ministers may take a decision to admit a State as a member of the ACP Group:
 - a) by virtue of its location within the geographical regions of the ACP Group, and/or
 - b) if it accedes to the ACP-EC Partnership Agreement currently in force.
2. In either case the Council of Ministers shall determine the modalities for admission.
3. The new member shall assume all the rights and the obligations arising from this Agreement.

Article 29

On the recommendation of the Committee of Ambassadors, the Council of Ministers may grant Observer Status in the ACP Group to:

- a) independent states within the ACP geographical regions which express their intention to seek membership of the ACP Group or to accede to the ACP-EC Partnership Agreement currently in force;
- b) regional bodies of the ACP states; and
- c) international organisations that pursue development objectives similar to those of the ACP Group, on the basis of reciprocity.

CHAPTER V

FINAL PROVISIONS

Article 30

1. The provisions of this Agreement may be amended by a decision of the Council of Ministers.
2. A proposal for an amendment shall be submitted in writing by any Member State to the ACP Secretariat. It shall be accompanied by supporting documents.
3. The proposed amendment and supporting documents shall be communicated by the ACP Secretariat for the consideration of the Member States of the ACP Group.
4. The proposed amendment shall not be included on the Agenda of a meeting of the Council of Ministers unless a period of at least six months from the date of its communication to the Member States has elapsed.
5. The amendment shall enter into force when it is approved by a decision of the Council of Ministers.

Article 31

1. The official languages of the ACP Group shall be English, French, Portuguese, Spanish and any other language as may be decided by the Council of Ministers.

Article 32

The ACP Secretariat is the depository of the Georgetown Agreement and shall ensure its publication.

The preceding text is a certified true copy of the Georgetown Agreement as amended and deposited in the archives of the Secretariat of the African, Caribbean and Pacific Group of States, in Brussels, which entered into force on the 28 November 2003, the date on which it was adopted by Decision No.1/LXXVIII/03 of the ACP Council of Ministers.

Brussels, 1st December 2003

**Jean-Robert GOULONGANA
Secretary-General of the African,
Caribbean and Pacific Group of States**

APPENDIX IV
SUVA DECLARATION

Fiji, 14 April, 1977

THE ACP COUNCIL OF MINISTERS:

RECALLING the declaration of Heads of States, Heads of Governments and Government Ministers of ACP Countries manifesting the political will of the ACP States to strengthen cooperation among themselves for their individual and collective benefit;

CONSIDERING the steps already taken to consolidate and strengthen the existing solidarity of the ACP Group in the conclusion of the Georgetown Agreement formally establishing the ACP Group;

MINDFUL of the need to translate into practical action the principles of collective self-reliance and of self-determination by the ACP countries to reinforce their unity and capacity for joint action;

HEREBY DECLARES THE ADOPTION OF THE FOLLOWING PROGRAMME OF ACTION.

The Action Programme for Intra-ACP Cooperation

The Action Programme deals with six major sectors of cooperation among ACP countries, viz:

- 1) Transport, communications and other services;
- 2) Trade;
- 3) Development of Intra-ACP Enterprises and Cooperation in production;
- 4) Development finance;
- 5) Technology, Know-how, and technical assistance;
- 6) Cultural, Scientific and Educational Cooperation;

1. TRANSPORT, COMMUNICATION AND OTHER SERVICES

An essential complement to the development and strengthening of trade cooperation, as well as to the development of intra-ACP enterprises and cooperation in production, is the implementation of appropriate measures in the service sectors, particularly shipping, air and land transport, communications and banking, insurance and credit.

In respect of shipping and shipping services, the ACP would need to examine and to identify the particular measures necessary for assisting the following main areas:

- (i) The expansion of trade between the ACP countries;
- (ii) Intra-ACP Cooperation in production;
- (iii) The stimulation of exports from ACP countries to third countries;
- (iv) Cooperation in import policy and practice among ACP countries.

Related studies on alternative means of transport and the creation, improvement, or adaption of port facilities, will also have to be undertaken.

The question of transportation is fundamental to the development of intra-ACP Cooperation. With regard to new trade flows between the ACP countries, much will depend on the availability and cost of the transport services. Thus the ACP will need to determine to what extent the lack of these services or their cost constitutes a barrier to the expansion of trade in ACP commodities. The ACP would also need to examine the existing and potential trade routes and the cargo flows estimates to determine the traffic demands in relation to the existing shipping tonnage owned by the ACP States.

With respect to the stimulation of exports from ACP to third countries, and the coordination of export policies and practices by ACP States, studies will initially centre around the considerable savings that might be made by ACP countries from cooperative efforts in the bulk handling of homogenous cargoes moving on large quantities and the aggregation of mixed liner cargoes on a regional or sub-regional basis. Such investigations should also illustrate the economic feasibility of establishing or strengthening regional shipping lines serving the different area of the ACP.

The importance of communications networks between the ACP countries as a basic precondition for development of intra-ACP cooperation in trade production, is all but equaled by that of the services such as insurance, banking and credit. The machinery for increased functional cooperation between these sectors of the ACP States should therefore be considered at an early stage.

2. TRADE

Having regard to the need for a fair distribution of the benefits of such a programme among the regions of Africa, the Caribbean and the Pacific, measures in this area must be designed with view to:

- (i) The strengthening of the collective bargaining power of the ACP countries in their export and import trade with the industrialized countries and their ability to exploit more fully available opportunities in the markets of those countries;
- (ii) The liberalization of trade among the ACP countries and between the ACP countries and other developing countries. The mechanism for such trade liberalization would be the adoption of an ACP-wide scheme for the provision of a distinct margin of advantage in favour of ACPs and other developing countries' supplies from developed countries care being taken to ensure an equitable distribution of the costs and benefits of the scheme among the individual participating countries. The scheme need not necessarily aim at full trade liberalization but could be restricted to immediate and realistic targets;
- (iii) The full utilization of those measures in the Lome' Convention (eg. As in Article 7 (2) (b) of Title I) which offer direct support to the expansion of ACP trade, of the GATT protocol of December 8, 1971 relating to Trade Negotiations among Development Countries and other international arrangements providing special support for intra-developing countries' trade.
- (iv) The adoption of active measures of trade cooperation between the ACP States such as the conclusion of medium and long- term contractual arrangements as a means of directly expanding intra-ACP trade flows and of developing new trade flows. These arrangements can involve commitments to supply and purchase specific commodities within mutually agreed price ranges over given periods of time;
- (v) The strengthening of cooperation between ACP producers for joint action aimed at improving and stabilizing prices, at cooperation in processing, at product improvement, at providing technical support and at direct marketing distribution and shipping. Such efforts would have the result of reducing the traditional dependence on the marketing systems and distribution channels of the developed countries, especially those organized through the intra-firm transactions of transnational corporations and through commodity markets and exchanges controlled by the developed countries; and of increasing the share of the value-added retained by ACP countries. Joint ACP marketing and market intelligence services should also be contemplated in this regard;
- (vi) The full exploitation of the provisions of the Lome' Convention relating to the accumulation of processing and cumulative treatment in respect of exports to the European Community;

- (vii) The identification of the possibilities for the production of and trade in goods deriving from the particular specialization of ACP States and the scope for complementarity between various sectors of different ACP countries;
- (viii) The identification of specific obstacles to the initiation and expansion of trade between the ACP countries and taking the necessary steps to overcome the obstacles;
- (ix) The initiation of effective intra-ACP cooperation in developing a system of payments arrangements for trade, by means of a network of clearing arrangements at the regional and sub-regional levels, by the development of closer linkages between these arrangements, and by the development of closer links between the central banks of ACP countries with a view to furthering the principle of collective self-reliance.

3. THE DEVELOPMENT OF INTRA-ACP ENTERPRISES AND COOPERATION IN PRODUCTION

Central to the strategy for the achievement of the objectives of intra-ACP cooperation is the development of multinational intra-ACP Enterprises for production. The development of such complementary productive capacity is a major precondition for the satisfactory development of the resource endowments of many ACP States, for the expansion and diversification of intra-ACP trade, as well as for the enhancement of the position of ACP trade in the markets of third countries.

Article 8 (a) of Protocol N° 2 of the Lome' Convention makes basic provision for financial support in the setting up of "regional and inter-regional enterprises", such initial impetus as represented by these resources should be fully utilized in the achievement of this major objective.

The process of identifying opportunities for establishing such enterprises should be given immediate expert attention so that there can be early initiation of intra-ACP collaboration and negotiations for the establishment of appropriate intra-ACP enterprises in the fields of natural resources, technology, management, finance, markets etc. The balancing of the interests of participating countries should not be overlooked and emphasis might be more wisely placed on factor complementarity rather than on equity financing in the creation of these enterprises.

Collaboration should also be strengthened in relation to the development of infrastructure and services such as hydro-electric plants, road networks, telecommunications, water development, airline and shipping services, insurance, finance and banking institutions and technological and research services. Special concern for the benefits of the least developed, Islands and land-locked countries should continue to be a major preoccupation of such collaboration.

Regional and sub-regional plans for the production of food for home consumption should also be the subject of exchanges and collaboration between ACP countries.

As a first step, inventories of possible intra-ACP enterprises in all these fields should be drawn up in cooperation with regional and sub-regional financial institutions-and if possible with national development banks. The gathering of technical data essential to this exercise must be undertaken immediately, together with the organizing and updating of

relevant data available in U.N. Agencies and financial institutions, such as the World Bank Group.

4. DEVELOPMENT FINANCE

In the field of development finance, provisions already exist in the Lome' Convention under which direct financial support is available for the furtherance of intra-ACP cooperation. Apart from this, an early start should be made within the ACP Group to ensure greater collaboration and cooperation in respect of the individual aid programme now being established under the Lome' Convention. In addition, machinery can be instituted within the ACP Secretariat for maximizing the benefits to ACP enterprises arising out of the provisions of the Convention relating to invitations to tender in respect of EEC-financed projects.

Other measures aimed at improving the availability of capital on terms more favourable to the ACP countries might be contemplated, and whenever possible, with the cooperation of other developing countries. Intra-ACP cooperation, in the context of cooperation with other developing countries, could;

- (i) Provide for balance-of-payments adjustments assistance,
- (ii) Support stabilization of commodity export prices at equitable and remunerative levels and,
- (iii) Serve as a framework for long-term development finance.

Experience regarding monetary and financial measures now in existence or under contemplation in various regions or sub-regions of the ACP could be shared on a systematic basis with a view to their deepening and widening for the benefit of the ACP States jointly and severally.

5. TECHNOLOGY, KNOW-HOW AND TECHNICAL ASSISTANCE

Intra-ACP technical cooperation projects are a vital part of intra ACP cooperation. They are already envisaged under the Lome' Convention and this can be used as a basis for the development and expansion of technology transfer among the ACP States. The measures to achieve this could include:

- (i) Increased flow of technologies and know-how evolved within the ACP or other developing countries;
- (ii) Exchange of information and expertise in respect of available technologies;
- (iii) Technical assistance, in particular through the exchange of experts, advisory services and training courses;
- (iv) The utilizing of the services of engineering designing and consultancy firms in ACP or other developing countries which could provide the appropriate technology and ensure the maximum component of indigenous equipment;
- (v) Collective efforts at joint projects for the acquisition and development of technologies for utilization in more than one country;

- (vi) The elaboration of preferential arrangements for the development and transfer of technology among themselves and the establishing of regional and sub-regional centers for development and transfer of technology which could serve as essential links with centers in other countries.

A start can be made by preparing files on available expertise within the ACP countries, such files drawn up with the assistance of the regional and sub-regional groups as well as the information now available in regional and international organizations.

6. CULTURAL, SCIENTIFIC AND EDUCATIONAL COOPERATION

The development of programme and the establishment of machinery within the ACP Group for educational, scientific and cultural exchanges must be contemplated at an early date.. In this regard, the ACP Secretariat, in collaboration with appropriate regional institutions, might initially be used as a clearing house for the exchange of information as to possibilities in this field.

As far as practicable, the initial steps in the realization of these measures should give emphasis to and be built on regional cooperation.

In all undertakings in the context of the Action Programme, the problems of the least developed, landlocked, semi-landlocked and island countries must continually be borne in mind and therefore efforts must be made to define the measures which would be of benefit to those countries within the action programme of intra-ACP Cooperation.

THE ACP STATES ACCEPT THE ABOVE AREAS AND METHODS OF COOPERATION AS CONSTITUTING THE FOUNDATION OF THEIR EFFORTS AT COOPERATION AND SELF RELIANCE, A FOUNDATION ON WHICH THEY WILL STRIVE TO BUILD A STRONG AND UNITED BROTHERHOOD OF NATIONS.

APPENDIX V

CARIFORUM- EPA College of Negotiators

DEAN H.E. Ambassador Dr. Richard I. Bernal Director-General Caribbean Regional Negotiating Machinery(CRNM)	VICE-DEAN H.E. Ambassador Errol Humphery Ambassador of Barbados to Belgium and the EU
SPECIAL ADVISOR ON CSME Mr. Ivor Carryl Programme Manager, CSME CSME Unit	
MARKET ACCESS	
LEAD Mr. Branford Issacs Consultant	ALTERNATE Mr. Nigel Durrant (Agriculture) Agriculture Trade Specialist Caribbean Regional Negotiation Machinery Roberto Despradel (Market Access) Luis Ramón Rodríguez (Agriculture) Vice Minister of Agriculture Dominican Republic Mr. Norris Breedy (Rules of Origin) Deputy Programme Manager, CSME CARICOM Community Secretariat Mr. Calixte Leon External Trade Advisor Ministry of External Affairs, International Trade & Civil Aviation St.Lucia
SERVICES & INVESTMENT	
LEAD H.E. Ambassador Fedrico Cuello Ambassador of the Dominican Republic to Belgium and the EU	ALTERNATE H.E. Ambassador Errol Humphery Ambassador of Barbados to Belgium and the EU Mr.Ramesh Chaitoo Services Specialist Caribbean Regional Negotiating Machinery Mr. Lawrence Placide Director, international Trade Negotiations Unit Trinidad & Tobago Chamber of Industry and Commerce. Dr. Maurice Odle Economic Advisor to the Secretary General CARICOM Community Secretariat
TRADE RELATED ISSUES	
LEAD Mrs. Patrice Pratt-Harrison Technical Advisor and Government Procurement Specialist Caribbean Regional Negotiating Machinery	ALTERNATE Mr. Malcolm Spence Technical Adviser Intellectual Property/Agriculture (SPS) Caribbean Regional Negotiating Machinery
LEGAL & INSTITUTIONAL ISSUES	
LEAD Dr. Kusha Haraksingh Legal Consultant University of the West Indies	ALTERNATE Ms. Elma-Gene Issacs Senior Legal Officer CSME Unit
Mr. Audel Cunningham Legal Advisor Caribbean regional Negotiating Machinery	